

1 AN ACT in relation to criminal matters.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the  
5 Illinois Independent Forensic Laboratory Act.

6 Section 2. Illinois Independent Forensic Laboratory.

7 (a) There is created the Illinois Independent Forensic  
8 Laboratory. The Laboratory shall be governed by a board of  
9 directors consisting of 5 members appointed by the Governor.  
10 Each member of the board of directors shall serve a 4-year  
11 term, except that 3 of the initial members appointed to the  
12 board of directors after the effective date of this Act shall  
13 each serve a 2-year term. The members of the board of  
14 directors shall by a vote of 3 members chose a chairperson to  
15 serve a 2-year term. The presence of 3 members of the board  
16 of directors shall constitute a quorum to do business.

17 (b) Members of the board of directors shall serve  
18 without compensation, but shall be reimbursed for necessary  
19 expenses incurred in the performance of their duties.  
20 Vacancies on the board of directors shall be filled by the  
21 Governor. A member of the board of directors appointed to  
22 fill a vacancy shall serve for the unexpired term of the  
23 member whom he or she is succeeding.

24 (c) The members of the board of directors shall by a  
25 majority vote hire an Executive Director who shall serve at  
26 the pleasure of the board of directors. The Executive  
27 Director shall manage the operations of the Laboratory under  
28 the direction of the board of directors. The Executive  
29 Director shall hire such personnel as are necessary to carry  
30 out the operations of the Laboratory with the approval of the  
31 board of directors.

1 (d) The Illinois Independent Forensic Laboratory shall  
2 conduct forensic testing for Illinois law enforcement  
3 agencies. Notwithstanding any other law to the contrary, all  
4 functions related to forensic testing by the Department of  
5 State Police shall instead be performed by the Illinois  
6 Independent Forensic Laboratory, and the board of directors  
7 and the Department of State Police shall enter into a  
8 cooperative agreement to transfer appropriate assets.

9 Section 5. The Attorney General Act is amended by  
10 changing Section 4 as follows:

11 (15 ILCS 205/4) (from Ch. 14, par. 4)

12 Sec. 4. The duties of the Attorney General shall be--

13 First - To appear for and represent the people of the  
14 State before the supreme court in all cases in which the  
15 State or the people of the State are interested.  
16 Notwithstanding this provision, the Office of Public Counsel  
17 shall be authorized to represent the interests of the people  
18 of the State in all proceedings pertinent to utility  
19 regulation, including cases before the supreme court, where  
20 any such case is properly brought by the Office pursuant to  
21 its statutory duties and powers.

22 Second - To institute and prosecute all actions and  
23 proceedings in favor of or for the use of the State, which  
24 may be necessary in the execution of the duties of any State  
25 officer.

26 Third - To defend all actions and proceedings against any  
27 State officer, in his official capacity, in any of the courts  
28 of this State or the United States.

29 Fourth - To consult with and advise the several State's  
30 Attorneys in matters relating to the duties of their office;  
31 and when, in his judgment, the interest of the people of the  
32 State requires it, he shall attend the trial of any party

1 accused of crime, and assist in the prosecution. When the  
2 Attorney General has requested in writing that a State's  
3 Attorney initiate court proceedings to enforce any provisions  
4 of the Election Code or to initiate a criminal prosecution  
5 with respect to a violation of the Election Code, and when  
6 the State's Attorney has declined in writing to initiate  
7 those proceedings or prosecutions or when the State's  
8 Attorney has neither initiated the proceedings or  
9 prosecutions nor responded in writing to the Attorney General  
10 within 60 days of the receipt of the request, the Attorney  
11 General may, concurrently with or independently of the  
12 State's Attorney, initiate such proceedings or prosecutions.

13 Fifth - To investigate alleged violations of the statutes  
14 which the Attorney General has a duty to enforce and to  
15 conduct other investigations in connection with assisting in  
16 the prosecution of a criminal offense at the request of a  
17 State's Attorney.

18 Sixth - To consult with and advise the governor and other  
19 State officers, and give, when requested, written opinions  
20 upon all legal or constitutional questions relating to the  
21 duties of such officers respectively.

22 Seventh - To prepare, when necessary, proper drafts for  
23 contracts and other writings relating to subjects in which  
24 the State is interested.

25 Eighth - To give written opinions, when requested by  
26 either branch of the general assembly, or any committee  
27 thereof, upon constitutional or legal questions.

28 Ninth - To enforce the proper application of funds  
29 appropriated to the public institutions of the State,  
30 prosecute breaches of trust in the administration of such  
31 funds, and, when necessary, prosecute corporations for  
32 failure or refusal to make the reports required by law.

33 Tenth - To keep, a register of all cases prosecuted or  
34 defended by him, in behalf of the State or its officers, and

1 of all proceedings had in relation thereto, and to deliver  
2 the same to his successor in office.

3 Eleventh - To keep on file in his office a copy of the  
4 official opinions issued by the Attorney General and deliver  
5 same to his successor.

6 Twelfth - To pay into the State treasury all moneys  
7 received by him for the use of the State.

8 Thirteenth - To attend to and perform any other duty  
9 which may, from time to time, be required of him by law.

10 Fourteenth - To attend, present evidence to and prosecute  
11 indictments returned by each Statewide Grand Jury.

12 Fifteenth - To publish a guide based on the United States  
13 Department of State manual for state and local law  
14 enforcement agencies of their notification obligations under  
15 the Vienna Convention on Consular Relations and to regularly  
16 review measures taken by State and Local law enforcement  
17 agencies to ensure full compliance with the notification  
18 obligations.

19 (Source: P.A. 87-466.)

20 Section 10. The State Police Act is amended by adding  
21 Section 9.5 as follows:

22 (20 ILCS 2610/9.5 new)

23 Sec. 9.5. Curricula relating to the arrest and detention  
24 of foreign nationals. The Board shall require persons  
25 appointed as Department of State Police officers to be  
26 instructed on consular rights and the notification  
27 obligations to be followed during the arrest and detention of  
28 foreign nationals under the protocols of the Vienna  
29 Convention on Consular Relations.

30 Section 15. The Illinois Criminal Justice Information  
31 Act is amended by changing Section 7 as follows:

1 (20 ILCS 3930/7) (from Ch. 38, par. 210-7)

2 Sec. 7. Powers and Duties. The Authority shall have the  
3 following powers, duties and responsibilities:

4 (a) To develop and operate comprehensive  
5 information systems for the improvement and coordination  
6 of all aspects of law enforcement, prosecution and  
7 corrections;

8 (b) To define, develop, evaluate and correlate  
9 State and local programs and projects associated with the  
10 improvement of law enforcement and the administration of  
11 criminal justice;

12 (c) To act as a central repository and clearing  
13 house for federal, state and local research studies,  
14 plans, projects, proposals and other information relating  
15 to all aspects of criminal justice system improvement and  
16 to encourage educational programs for citizen support of  
17 State and local efforts to make such improvements;

18 (d) To undertake research studies to aid in  
19 accomplishing its purposes;

20 (e) To monitor the operation of existing criminal  
21 justice information systems in order to protect the  
22 constitutional rights and privacy of individuals about  
23 whom criminal history record information has been  
24 collected;

25 (f) To provide an effective administrative forum  
26 for the protection of the rights of individuals  
27 concerning criminal history record information;

28 (g) To issue regulations, guidelines and procedures  
29 which ensure the privacy and security of criminal history  
30 record information consistent with State and federal  
31 laws;

32 (h) To act as the sole administrative appeal body  
33 in the State of Illinois to conduct hearings and make  
34 final determinations concerning individual challenges to

1 the completeness and accuracy of criminal history record  
2 information;

3 (i) To act as the sole, official, criminal justice  
4 body in the State of Illinois to conduct annual and  
5 periodic audits of the procedures, policies, and  
6 practices of the State central repositories for criminal  
7 history record information to verify compliance with  
8 federal and state laws and regulations governing such  
9 information;

10 (j) To advise the Authority's Statistical Analysis  
11 Center;

12 (k) To apply for, receive, establish priorities  
13 for, allocate, disburse and spend grants of funds that  
14 are made available by and received on or after January 1,  
15 1983 from private sources or from the United States  
16 pursuant to the federal Crime Control Act of 1973, as  
17 amended, and similar federal legislation, and to enter  
18 into agreements with the United States government to  
19 further the purposes of this Act, or as may be required  
20 as a condition of obtaining federal funds;

21 (l) To receive, expend and account for such funds  
22 of the State of Illinois as may be made available to  
23 further the purposes of this Act;

24 (m) To enter into contracts and to cooperate with  
25 units of general local government or combinations of such  
26 units, State agencies, and criminal justice system  
27 agencies of other states for the purpose of carrying out  
28 the duties of the Authority imposed by this Act or by the  
29 federal Crime Control Act of 1973, as amended;

30 (n) To enter into contracts and cooperate with  
31 units of general local government outside of Illinois,  
32 other states' agencies, and private organizations outside  
33 of Illinois to provide computer software or design that  
34 has been developed for the Illinois criminal justice

1 system, or to participate in the cooperative development  
2 or design of new software or systems to be used by the  
3 Illinois criminal justice system. Revenues received as a  
4 result of such arrangements shall be deposited in the  
5 Criminal Justice Information Systems Trust Fund.

6 (o) To establish general policies concerning  
7 criminal justice information systems and to promulgate  
8 such rules, regulations and procedures as are necessary  
9 to the operation of the Authority and to the uniform  
10 consideration of appeals and audits;

11 (p) To advise and to make recommendations to the  
12 Governor and the General Assembly on policies relating to  
13 criminal justice information systems;

14 (q) To direct all other agencies under the  
15 jurisdiction of the Governor to provide whatever  
16 assistance and information the Authority may lawfully  
17 require to carry out its functions;

18 (r) To exercise any other powers that are  
19 reasonable and necessary to fulfill the responsibilities  
20 of the Authority under this Act and to comply with the  
21 requirements of applicable federal law or regulation;

22 (s) To exercise the rights, powers and duties which  
23 have been vested in the Authority by the "Illinois  
24 Uniform Conviction Information Act", enacted by the 85th  
25 General Assembly, as hereafter amended; and

26 (t) To exercise the rights, powers and duties which  
27 have been vested in the Authority by the Illinois Motor  
28 Vehicle Theft Prevention Act; and-

29 (u) To establish a publicly accessible database  
30 containing data collected from each circuit judge and  
31 associate judge assigned to try first degree murder  
32 cases. The database shall contain data about first  
33 degree murder cases including details about the trials,  
34 backgrounds of the defendants, and the bases for the

1 sentences imposed. Each circuit judge and associate  
2 judge assigned to try first degree murder cases shall  
3 submit to the Administrative Office of the Illinois  
4 Courts a form containing information about each first  
5 degree murder trial, the background of the defendant, and  
6 the basis for the sentence imposed. Each form collected  
7 by the Administrative Office of the Illinois Courts from  
8 an individual case is not a public record but the  
9 collective data obtained from the forms is a public  
10 record; provided that the collective data does not  
11 identify an individual court, defendant, or specific  
12 case.

13 The requirement for reporting to the General Assembly  
14 shall be satisfied by filing copies of the report with the  
15 Speaker, the Minority Leader and the Clerk of the House of  
16 Representatives and the President, the Minority Leader and  
17 the Secretary of the Senate and the Legislative Research  
18 Unit, as required by Section 3.1 of "An Act to revise the law  
19 in relation to the General Assembly", approved February 25,  
20 1874, as amended, and filing such additional copies with the  
21 State Government Report Distribution Center for the General  
22 Assembly as is required under paragraph (t) of Section 7 of  
23 the State Library Act.

24 (Source: P.A. 85-922; 86-1408.)

25 Section 20. The Illinois Police Training Act is amended  
26 by changing Sections 6.1 and 7 as follows:

27 (50 ILCS 705/6.1)

28 Sec. 6.1. Decertification of full-time and part-time  
29 police officers.

30 (a) The Board must review police officer conduct and  
31 records to ensure that no police officer is certified or  
32 provided a valid waiver if that police officer has been:

1           (1) convicted of a felony offense under the laws of  
2 this State or any other state which if committed in this  
3 State would be punishable as a felony;

4           (2) ~~The Board must also ensure that no police~~  
5 ~~officer is certified or provided a valid waiver if that~~  
6 ~~police officer has been~~ convicted on or after the  
7 effective date of this amendatory Act of 1999 of any  
8 misdemeanor specified in this Section or if committed in  
9 any other state would be an offense similar to Section  
10 11-6, 11-9.1, 11-14, 11-17, 11-19, 12-2, 12-15, 16-1,  
11 17-1, 17-2, 28-3, 29-1, 31-1, 31-6, 31-7, 32-4a, or 32-7  
12 of the Criminal Code of 1961 or to Section 5 or 5.2 of  
13 the Cannabis Control Act; or

14           (3) the subject of an administrative determination,  
15 conducted pursuant to the rules and regulations of the  
16 law enforcement agency or department employing the police  
17 officer, of knowingly committing perjury in a criminal  
18 proceeding. For the purposes of this subsection,  
19 "perjury" shall have the meaning as set forth in Section  
20 32-2 of the Criminal Code of 1961.

21           The Board must appoint investigators to enforce the  
22 duties conferred upon the Board by this Act.

23           (b) It is the responsibility of the sheriff or the chief  
24 executive officer of every local law enforcement agency or  
25 department within this State to report to the Board any  
26 arrest, administrative determination of perjury, or  
27 conviction of any officer for an offense identified in this  
28 Section.

29           (c) It is the duty and responsibility of every full-time  
30 and part-time police officer in this State to report to the  
31 Board within 30 days, and the officer's sheriff or chief  
32 executive officer, of his or her arrest, administrative  
33 determination of perjury, or conviction for an offense  
34 identified in this Section. Any full-time or part-time police

1 officer who knowingly makes, submits, causes to be submitted,  
2 or files a false or untruthful report to the Board must have  
3 his or her certificate or waiver immediately decertified or  
4 revoked.

5 (d) Any person, or a local or State agency, or the Board  
6 is immune from liability for submitting, disclosing, or  
7 releasing information of arrests, administrative  
8 determinations of perjury, or convictions in this Section as  
9 long as the information is submitted, disclosed, or released  
10 in good faith and without malice. The Board has qualified  
11 immunity for the release of the information.

12 (e) Any full-time or part-time police officer with a  
13 certificate or waiver issued by the Board who is convicted of  
14 any offense described in this Section or is subject to an  
15 administrative determination of perjury immediately becomes  
16 decertified or no longer has a valid waiver. The  
17 decertification and invalidity of waivers occurs as a matter  
18 of law. Failure of a convicted person to report to the Board  
19 his or her conviction as described in this Section or any  
20 continued law enforcement practice after receiving a  
21 conviction is a Class 4 felony.

22 (f) The Board's investigators are peace officers and  
23 have all the powers possessed by policemen in cities and by  
24 sheriff's, provided that the investigators may exercise those  
25 powers anywhere in the State, only after contact and  
26 cooperation with the appropriate local law enforcement  
27 authorities.

28 (g) The Board must request and receive information and  
29 assistance from any federal, state, or local governmental  
30 agency as part of the authorized criminal background  
31 investigation. The Department of State Police must process,  
32 retain, and additionally provide and disseminate information  
33 to the Board concerning criminal charges, arrests,  
34 convictions, and their disposition, that have been filed

1 before, on, or after the effective date of this amendatory  
2 Act of the 91st General Assembly against a basic academy  
3 applicant, law enforcement applicant, or law enforcement  
4 officer whose fingerprint identification cards are on file or  
5 maintained by the Department of State Police. The Federal  
6 Bureau of Investigation must provide the Board any criminal  
7 history record information contained in its files pertaining  
8 to law enforcement officers or any applicant to a Board  
9 certified basic law enforcement academy as described in this  
10 Act based on fingerprint identification. The Board must make  
11 payment of fees to the Department of State Police for each  
12 fingerprint card submission in conformance with the  
13 requirements of paragraph 22 of Section 55a of the Civil  
14 Administrative Code of Illinois.

15 (Source: P.A. 91-495, eff. 1-1-00.)

16 (50 ILCS 705/7) (from Ch. 85, par. 507)

17 Sec. 7. Rules and standards for schools. The Board shall  
18 adopt rules and minimum standards for such schools which  
19 shall include but not be limited to the following:

20 a. The curriculum for probationary police officers which  
21 shall be offered by all certified schools shall include but  
22 not be limited to courses of arrest, search and seizure,  
23 civil rights, human relations, criminal law, law of criminal  
24 procedure, vehicle and traffic law, traffic control and  
25 accident investigation, techniques of obtaining physical  
26 evidence, court testimonies, statements, reports, firearms  
27 training, first-aid (including cardiopulmonary  
28 resuscitation), handling of juvenile offenders, recognition  
29 of mental conditions which require immediate assistance and  
30 methods to safeguard and provide assistance to a person in  
31 need of mental treatment, law of evidence, the hazards of  
32 high-speed police vehicle chases with an emphasis on  
33 alternatives to the high-speed chase, and physical training.

1 The curriculum shall also include instruction on consular  
2 rights and the notification obligations to be followed during  
3 the arrest and detention of foreign nationals under the  
4 protocols of the Vienna Convention on Consular Relations. The  
5 curriculum shall include specific training in techniques for  
6 immediate response to and investigation of cases of domestic  
7 violence and of sexual assault of adults and children. The  
8 curriculum for permanent police officers shall include but  
9 not be limited to (1) refresher and in-service training in  
10 any of the courses listed above in this subparagraph, (2)  
11 advanced courses in any of the subjects listed above in this  
12 subparagraph, (3) training for supervisory personnel, and (4)  
13 specialized training in subjects and fields to be selected by  
14 the board.

15 b. Minimum courses of study, attendance requirements and  
16 equipment requirements.

17 c. Minimum requirements for instructors.

18 d. Minimum basic training requirements, which a  
19 probationary police officer must satisfactorily complete  
20 before being eligible for permanent employment as a local law  
21 enforcement officer for a participating local governmental  
22 agency. Those requirements shall include training in first  
23 aid (including cardiopulmonary resuscitation).

24 e. Minimum basic training requirements, which a  
25 probationary county corrections officer must satisfactorily  
26 complete before being eligible for permanent employment as a  
27 county corrections officer for a participating local  
28 governmental agency.

29 f. Minimum basic training requirements which a  
30 probationary court security officer must satisfactorily  
31 complete before being eligible for permanent employment as a  
32 court security officer for a participating local governmental  
33 agency. The Board shall establish those training  
34 requirements which it considers appropriate for court

1 security officers and shall certify schools to conduct that  
2 training.

3 A person hired to serve as a court security officer must  
4 obtain from the Board a certificate (i) attesting to his or  
5 her successful completion of the training course; (ii)  
6 attesting to his or her satisfactory completion of a training  
7 program of similar content and number of hours that has been  
8 found acceptable by the Board under the provisions of this  
9 Act; or (iii) attesting to the Board's determination that the  
10 training course is unnecessary because of the person's  
11 extensive prior law enforcement experience.

12 Individuals who currently serve as court security  
13 officers shall be deemed qualified to continue to serve in  
14 that capacity so long as they are certified as provided by  
15 this Act within 24 months of the effective date of this  
16 amendatory Act of 1996. Failure to be so certified, absent a  
17 waiver from the Board, shall cause the officer to forfeit his  
18 or her position.

19 All individuals hired as court security officers on or  
20 after the effective date of this amendatory Act of 1996 shall  
21 be certified within 12 months of the date of their hire,  
22 unless a waiver has been obtained by the Board, or they shall  
23 forfeit their positions.

24 The Sheriff's Merit Commission, if one exists, or the  
25 Sheriff's Office if there is no Sheriff's Merit Commission,  
26 shall maintain a list of all individuals who have filed  
27 applications to become court security officers and who meet  
28 the eligibility requirements established under this Act.  
29 Either the Sheriff's Merit Commission, or the Sheriff's  
30 Office if no Sheriff's Merit Commission exists, shall  
31 establish a schedule of reasonable intervals for verification  
32 of the applicants' qualifications under this Act and as  
33 established by the Board.

34 (Source: P.A. 88-661, eff. 1-1-95; 89-685, eff. 6-1-97;

1 89-707, eff. 6-1-97.)

2 Section 25. The Counties Code is amended by changing  
3 Section 3-4006 as follows:

4 (55 ILCS 5/3-4006) (from Ch. 34, par. 3-4006)

5 Sec. 3-4006. Duties of public defender. The Public  
6 Defender, as directed by the court, shall act as attorney,  
7 without fee, before any court within any county for all  
8 persons who are held in custody or who are charged with the  
9 commission of any criminal offense, and who the court finds  
10 are unable to employ counsel.

11 The Public Defender shall be the attorney, without fee,  
12 when so appointed by the court under Section 1-20 of the  
13 Juvenile Court Act or Section 1-5 of the Juvenile Court Act  
14 of 1987 or by any court under Section 5(b) of the Parental  
15 Notice of Abortion Act of 1983 for any party who the court  
16 finds is financially unable to employ counsel.

17 The Public Defender may act as attorney, without fee and  
18 appointment by the court, for a person in custody during the  
19 person's interrogation regarding first degree murder for  
20 which the death penalty may be imposed, if the person has  
21 requested the advice of counsel and there is a reasonable  
22 belief that the person is indigent. Any further  
23 representation of the person by the Public Defender shall be  
24 pursuant to Section 109-1 of the Code of Criminal Procedure  
25 of 1963.

26 Every court shall, with the consent of the defendant and  
27 where the court finds that the rights of the defendant would  
28 be prejudiced by the appointment of the public defender,  
29 appoint counsel other than the public defender, except as  
30 otherwise provided in Section 113-3 of the "Code of Criminal  
31 Procedure of 1963". That counsel shall be compensated as is  
32 provided by law. He shall also, in the case of the conviction

1 of any such person, prosecute any proceeding in review which  
2 in his judgment the interests of justice require.

3 (Source: P.A. 86-962.)

4 Section 30. The Criminal Code of 1961 is amended by  
5 changing Sections 8-4, 9-1, and 14-3 as follows:

6 (720 ILCS 5/8-4) (from Ch. 38, par. 8-4)

7 Sec. 8-4. Attempt.

8 (a) Elements of the Offense.

9 A person commits an attempt when, with intent to commit a  
10 specific offense, he does any act which constitutes a  
11 substantial step toward the commission of that offense.

12 (b) Impossibility.

13 It shall not be a defense to a charge of attempt that  
14 because of a misapprehension of the circumstances it would  
15 have been impossible for the accused to commit the offense  
16 attempted.

17 (c) Sentence.

18 A person convicted of an attempt may be fined or  
19 imprisoned or both not to exceed the maximum provided for the  
20 offense attempted but, except for an attempt to commit the  
21 offense defined in Section 33A-2 of this Act,

22 (1) the sentence for attempt to commit first degree  
23 murder is the sentence for a Class X felony, except that

24 (A) an attempt to commit first degree murder  
25 when at least one of the aggravating factors  
26 specified in paragraphs (1) and (2) ~~and--(12)~~ of  
27 subsection (b) of Section 9-1 is present is a Class  
28 X felony for which the sentence shall be a term of  
29 imprisonment of not less than 20 years and not more  
30 than 80 years;

31 (A-5) an attempt to commit first degree murder  
32 of an emergency medical technician - ambulance,

1 emergency medical technician - intermediate,  
2 emergency medical technician - paramedic, ambulance  
3 driver, or other medical assistance or first aid  
4 provider (i) while that provider was employed by a  
5 municipality or other governmental unit, (ii) when  
6 that provider was acting in the course of performing  
7 official duties, when the defendant acted to prevent  
8 the provider from performing official duties, or  
9 when the defendant acted in retaliation for the  
10 provider performing official duties, and (iii) when  
11 the defendant knew or should have known that the  
12 individual was an emergency medical technician -  
13 ambulance, emergency medical technician -  
14 intermediate, emergency medical technician -  
15 paramedic, ambulance driver, or other medical  
16 assistant or first aid provider, is a Class X felony  
17 for which the sentence shall be a term of  
18 imprisonment of not less than 20 years and not more  
19 than 80 years;

20 (B) an attempt to commit first degree murder  
21 while armed with a firearm is a Class X felony for  
22 which 15 years shall be added to the term of  
23 imprisonment imposed by the court;

24 (C) an attempt to commit first degree murder  
25 during which the person personally discharged a  
26 firearm is a Class X felony for which 20 years shall  
27 be added to the term of imprisonment imposed by the  
28 court;

29 (D) an attempt to commit first degree murder  
30 during which the person personally discharged a  
31 firearm that proximately caused great bodily harm,  
32 permanent disability, permanent disfigurement, or  
33 death to another person, is a Class X felony for  
34 which 25 years or up to a term of natural life shall

1 be added to the term of imprisonment imposed by the  
2 court.

3 (2) the sentence for attempt to commit a Class X  
4 felony is the sentence for a Class 1 felony;

5 (3) the sentence for attempt to commit a Class 1  
6 felony is the sentence for a Class 2 felony;

7 (4) the sentence for attempt to commit a Class 2  
8 felony is the sentence for a Class 3 felony; and

9 (5) the sentence for attempt to commit any felony  
10 other than those specified in subsections (1), (2), (3)  
11 and (4) hereof is the sentence for a Class A misdemeanor.

12 (Source: P.A. 91-404, eff. 1-1-00; 91-696, eff. 4-13-00.)

13 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

14 Sec. 9-1. First degree Murder - Death penalties -  
15 Exceptions - Separate Hearings - Proof - Findings - Appellate  
16 procedures - Reversals.

17 (a) A person who kills an individual without lawful  
18 justification commits first degree murder if, in performing  
19 the acts which cause the death:

20 (1) he either intends to kill or do great bodily  
21 harm to that individual or another, or knows that such  
22 acts will cause death to that individual or another; or

23 (2) he knows that such acts create a strong  
24 probability of death or great bodily harm to that  
25 individual or another; or

26 (3) he is attempting or committing a forcible  
27 felony other than second degree murder.

28 (b) Aggravating Factors. A defendant:

29 (i) who at the time of the commission of the  
30 offense has attained the age of 18 or more; and

31 (ii) who has been found guilty of first degree  
32 murder; and

33 (iii) whose guilt was not, in the

1 determination of the court, based solely upon the  
2 uncorroborated testimony of one eyewitness, of one  
3 accomplice, or of one incarcerated informant;

4 may be sentenced to death if:

5 (1) the murdered individual was a peace officer or  
6 fireman killed in the course of performing his official  
7 duties, to prevent the performance of his official  
8 duties, or in retaliation for performing his official  
9 duties, and the defendant knew or should have known that  
10 the murdered individual was a peace officer or fireman;  
11 or

12 (2) the murdered individual was an employee of an  
13 institution or facility of the Department of Corrections,  
14 or any similar local correctional agency, killed in the  
15 course of performing his official duties, to prevent the  
16 performance of his official duties, or in retaliation for  
17 performing his official duties, or the murdered  
18 individual was an inmate at such institution or facility  
19 and was killed on the grounds thereof, or the murdered  
20 individual was otherwise present in such institution or  
21 facility with the knowledge and approval of the chief  
22 administrative officer thereof; or

23 (3) the defendant has been convicted of murdering  
24 two or more individuals under subsection (a) of this  
25 Section or under any law of the United States or of any  
26 state which is substantially similar to subsection (a) of  
27 this Section regardless of whether the deaths occurred  
28 as the result of the same act or of several related or  
29 unrelated acts so long as the deaths were the result of  
30 either an intent to kill more than one person or of  
31 separate acts which the defendant knew would cause death  
32 or create a strong probability of death or great bodily  
33 harm to the murdered individual or another; or

34 (4) (blank) ~~the-murdered-individual-was-killed-as-a~~

1 result-of-the-hijacking-of-an-airplane, train, ship, bus  
2 or-other-public-conveyance; or

3 (5) (blank) the-defendant-committed-the-murder  
4 pursuant-to-a-contract, agreement-or-understanding-by  
5 which-he-was-to-receive-money-or-anything-of-value-in  
6 return-for-committing-the-murder-or-procured-another-to  
7 commit-the-murder-for-money-or-anything-of-value; or

8 (6) (blank) the-murdered-individual-was-killed-in  
9 the-course-of-another-felony-if:

10 (a)-the-murdered-individual:

11 (i)-was-actually-killed-by-the-defendant,  
12 or

13 (ii)-received-physical-injuries  
14 personally-infllicted-by-the-defendant  
15 substantially-contemporaneously-with-physical  
16 injuries-caused-by-one-or-more-persons-for  
17 whose-conduct-the-defendant-is-legally  
18 accountable-under-Section-5-2-of-this-Code, and  
19 the-physical-injuries-infllicted-by-either-the  
20 defendant-or-the-other-person-or-persons-for  
21 whose-conduct-he-is-legally-accountable-caused  
22 the-death-of-the-murdered-individual; and

23 (b)-in-performing-the-acts-which-caused-the  
24 death-of-the-murdered-individual-or-which-resulted  
25 in-physical-injuries-personally-infllicted-by-the  
26 defendant-on-the-murdered-individual-under-the  
27 circumstances-of-subdivision-(ii)-of-subparagraph  
28 (a)-of-paragraph-(6)-of-subsection-(b)-of-this  
29 Section, the-defendant-acted-with-the-intent-to-kill  
30 the-murdered-individual-or-with-the-knowledge-that  
31 his-acts-created-a-strong-probability-of-death-or  
32 great-bodily-harm-to-the-murdered-individual-or  
33 another; and

34 (c)-the-other-felony-was-one-of-the-following:

1 armed-robbery, armed-violence, robbery, predatory  
 2 eriminal-sexual-assault-of-a-child, aggravated  
 3 eriminal-sexual-assault, aggravated-kidnapping,  
 4 aggravated-vehicular-hijacking, forcible-detention,  
 5 arson, aggravated-arson, aggravated-stalking,  
 6 burglary, residential-burglary, home-invasion,  
 7 calculated-criminal-drug-conspiracy-as-defined-in  
 8 Section-405-of-the-Illinois-Controlled-Substances  
 9 Act, streetgang-criminal-drug-conspiracy-as-defined  
 10 in-Section-405.2-of-the-Illinois-Controlled  
 11 Substances-Act, or the-attempt-to-commit-any-of-the  
 12 felonies-listed-in-this-subsection-(c); or

13 (7) (blank) the-murdered-individual-was-under-12  
 14 years-of-age-and-the-death-resulted-from-exceptionally  
 15 brutal-or-heinous-behavior-indicative-of-wanton-cruelty;  
 16 or

17 (8) the defendant committed the murder with intent  
 18 to prevent the murdered individual from testifying or  
 19 participating in any criminal investigation or  
 20 prosecution or giving material assistance to the State in  
 21 any investigation or prosecution, either against the  
 22 defendant or another; or the defendant committed the  
 23 murder because the murdered individual was a witness or  
 24 participated in any prosecution or gave material  
 25 assistance to the State in any investigation or  
 26 prosecution, either against the defendant or another; or

27 (9) (blank) the-defendant, while-committing-an  
 28 offense-punishable-under-Sections-401, 401.1, 401.2, 405,  
 29 405.2, 407-or-407.1-or-subsection-(b)-of-Section-404-of  
 30 the-Illinois-Controlled-Substances-Act, or-while-engaged  
 31 in-a-conspiracy-or-solicitation-to-commit-such-offense,  
 32 intentionally-killed-an-individual-or-counseled,  
 33 commanded, induced, procured-or-caused-the-intentional  
 34 killing-of-the-murdered-individual; or

1           (10) (blank) the-defendant-was-incarcerated--in--an  
 2 institution--or-facility-of-the-Department-of-Corrections  
 3 at-the-time--of--the--murder,--and--while--committing--an  
 4 offense--punishable--as--a--felony-under-Illinois-law,--or  
 5 while-engaged-in-a-conspiracy-or-solicitation--to--commit  
 6 such--offense,--intentionally--killed--an--individual--or  
 7 counseled,--commanded,--induced,--procured--or-caused-the  
 8 intentional-killing-of-the-murdered-individual; or

9           (11) (blank) the-murder-was-committed--in--a--cold,  
 10 calculated--and--premeditated--manner--pursuant--to--a  
 11 preconceived-plan,--scheme-or-design-to-take-a-human--life  
 12 by--unlawful--means,--and--the--conduct--of--the--defendant  
 13 created-a-reasonable-expectation--that--the--death--of--a  
 14 human-being-would-result-therefrom; or

15           (12) (blank) the--murdered--individual--was--an  
 16 emergency--medical--technician----ambulance,--emergency  
 17 medical--technician----intermediate,--emergency--medical  
 18 technician----paramedic,--ambulance--driver,--or--other  
 19 medical-assistance-or-first-aid-personnel,--employed-by--a  
 20 municipality--or--other--governmental-unit,--killed-in-the  
 21 course-of-performing-his-official-duties,--to-prevent--the  
 22 performance-of-his-official-duties,--or-in-retaliation-for  
 23 performing-his-official-duties,--and-the-defendant-knew-or  
 24 should--have--known--that--the-murdered-individual-was-an  
 25 emergency--medical--technician----ambulance,--emergency  
 26 medical--technician----intermediate,--emergency--medical  
 27 technician----paramedic,--ambulance--driver,--or--other  
 28 medical-assistance-or-first-aid-personnel; or

29           (13) (blank) the--defendant--was--a--principal  
 30 administrator,--organizer,--or--leader--of--a--calculated  
 31 criminal--drug--conspiracy--consisting--of--a--hierarchical  
 32 position-of-authority--superior--to--that--of--all--other  
 33 members--of--the-conspiracy,--and-the-defendant-counseled,  
 34 commanded,--induced,--procured,--or-caused--the--intentional

1 killing-of-the-murdered-person; or

2 (14) the murder was intentional and involved the  
3 infliction of torture. For the purpose of this Section  
4 torture means the infliction of or subjection to extreme  
5 physical pain, motivated by an intent to increase or  
6 prolong the pain, suffering or agony of the victim; or

7 (15) (blank) the murder was committed as a result  
8 of the intentional discharge of a firearm by the  
9 defendant from a motor vehicle and the victim was not  
10 present within the motor vehicle; or

11 (16) (blank) the murdered individual was 60 years  
12 of age or older and the death resulted from exceptionally  
13 brutal or heinous behavior indicative of wanton cruelty;  
14 or

15 (17) (blank) the murdered individual was a disabled  
16 person and the defendant knew or should have known that  
17 the murdered individual was disabled. For purposes of  
18 this paragraph (17), "disabled person" means a person who  
19 suffers from a permanent physical or mental impairment  
20 resulting from disease, an injury, a functional disorder,  
21 or a congenital condition that renders the person  
22 incapable of adequately providing for his or her own  
23 health or personal care; or

24 (18) (blank) the murder was committed by reason of  
25 any person's activity as a community policing volunteer  
26 or to prevent any person from engaging in activity as a  
27 community policing volunteer; or

28 (19) (blank) the murdered individual was subject to  
29 an order of protection and the murder was committed by a  
30 person against whom the same order of protection was  
31 issued under the Illinois Domestic Violence Act of 1986;  
32 or

33 (20) (blank) the murdered individual was known by  
34 the defendant to be a teacher or other person employed in

1 any-school-and-the-teacher-or-other-employee-is-upon--the  
2 grounds--of--a-school-or-grounds-adjacent-to-a-school,-or  
3 is-in-any-part-of-a-building-used-for-school-purposes; or

4 (21) (blank) the--murder--was--committed--by---the  
5 defendant--in--connection--with--or--as--a--result-of-the  
6 offense-of-terrorism-as-defined-in-Section-29D-30-of-this  
7 Code.

8 For the purpose of this Section:

9 "Torture" means the intentional and depraved infliction  
10 of extreme physical pain for a prolonged period of time prior  
11 to the victim's death.

12 "Depraved" means the defendant relished the infliction of  
13 extreme physical pain upon the victim evidencing debasement  
14 or perversion or that the defendant evidenced a sense of  
15 pleasure in the infliction of extreme physical pain.

16 "Participating in any criminal investigation or  
17 prosecution" is intended to include those appearing in the  
18 proceedings in any capacity, such as trial judges,  
19 prosecutors, defense attorneys, investigators, witnesses, or  
20 jurors.

21 (c) Consideration of accomplice or informant testimony  
22 and factors in Aggravation and Mitigation.

23 When the sentence of death is being sought by the State,  
24 the court shall consider, or shall instruct the jury to  
25 consider, that the testimony of an accomplice or incarcerated  
26 informant who may provide evidence against a defendant for  
27 pay, immunity from punishment, or personal advantage must be  
28 examined and weighed with greater care than the testimony of  
29 an ordinary witness. Whether the accomplice or informant's  
30 testimony has been affected by interest or prejudice against  
31 the defendant must be determined. In making the  
32 determination, the jury must consider (i) whether the  
33 accomplice or incarcerated informant has received anything,  
34 including pay, immunity from prosecution, leniency in

1 prosecution, or personal advantage, in exchange for  
2 testimony, (ii) any other case in which the accomplice or  
3 informant testified or offered statements against an  
4 individual but was not called, and whether the statements  
5 were admitted in the case, and whether the accomplice or  
6 informant received any deal, promise, inducement, or benefit  
7 in exchange for that testimony or statement, (iii) whether  
8 the accomplice or informant has ever changed his or her  
9 testimony, (iv) the criminal history of the accomplice or  
10 informant, and (v) any other evidence relevant to the  
11 credibility of the accomplice or informant.

12 The court shall also consider, or shall also instruct the  
13 jury to consider, any aggravating and any mitigating factors  
14 which are relevant to the imposition of the death penalty.  
15 Before the jury makes a determination with respect to the  
16 imposition of the death penalty, the court shall also  
17 instruct the jury of the applicable alternative sentences  
18 under Chapter V of the Unified Code of Corrections that the  
19 court may impose for first degree murder if a jury  
20 determination precludes the death sentence. Aggravating  
21 factors may include but need not be limited to those factors  
22 set forth in subsection (b). Mitigating factors may include  
23 but need not be limited to the following:

24 (1) the defendant has no significant history of  
25 prior criminal activity;

26 (2) the murder was committed while the defendant  
27 was under the influence of extreme mental or emotional  
28 disturbance, although not such as to constitute a defense  
29 to prosecution;

30 (3) the murdered individual was a participant in  
31 the defendant's homicidal conduct or consented to the  
32 homicidal act;

33 (4) the defendant acted under the compulsion of  
34 threat or menace of the imminent infliction of death or

1 great bodily harm;

2 (5) the defendant was not personally present during  
3 commission of the act or acts causing death;

4 (6) the defendant's background includes a history  
5 of extreme emotional or physical abuse;

6 (7) the defendant suffers from a reduced mental  
7 capacity.

8 (d) Separate sentencing hearing.

9 Where requested by the State, the court shall conduct a  
10 separate sentencing proceeding to determine the existence of  
11 factors set forth in subsection (b) and to consider any  
12 aggravating or mitigating factors as indicated in subsection  
13 (c). The proceeding shall be conducted:

14 (1) before the jury that determined the defendant's  
15 guilt; or

16 (2) before a jury impanelled for the purpose of the  
17 proceeding if:

18 A. the defendant was convicted upon a plea of  
19 guilty; or

20 B. the defendant was convicted after a trial  
21 before the court sitting without a jury; or

22 C. the court for good cause shown discharges  
23 the jury that determined the defendant's guilt; or

24 (3) before the court alone if the defendant waives  
25 a jury for the separate proceeding.

26 (e) Evidence and Argument.

27 During the proceeding any information relevant to any of  
28 the factors set forth in subsection (b) may be presented by  
29 either the State or the defendant under the rules governing  
30 the admission of evidence at criminal trials. Any  
31 information relevant to any additional aggravating factors or  
32 any mitigating factors indicated in subsection (c) may be  
33 presented by the State or defendant regardless of its  
34 admissibility under the rules governing the admission of

1 evidence at criminal trials. The defendant shall be given the  
2 opportunity, personally or through counsel, to make a  
3 statement that is not subject to cross-examination. If the  
4 proceeding is before a jury, the defendant's statement shall  
5 be reduced to writing in advance and submitted to the court  
6 and the State, so that the court may rule upon any  
7 evidentiary objection with respect to admissibility of the  
8 statement. The State and the defendant shall be given fair  
9 opportunity to rebut any information received at the hearing.

10 (f) Proof.

11 The burden of proof of establishing the existence of any  
12 of the factors set forth in subsection (b) is on the State  
13 and shall not be satisfied unless established beyond a  
14 reasonable doubt.

15 (g) Procedure - Jury.

16 If at the separate sentencing proceeding the jury finds  
17 that none of the factors set forth in subsection (b) exists,  
18 the court shall sentence the defendant to a term of  
19 imprisonment under Chapter V of the Unified Code of  
20 Corrections. If there is a unanimous finding by the jury  
21 that one or more of the factors set forth in subsection (b)  
22 exist, the jury shall consider aggravating and mitigating  
23 factors as instructed by the court and shall determine  
24 whether the sentence of death shall be imposed. If the jury  
25 determines unanimously, after weighing the factors in  
26 aggravation and mitigation, that death is the appropriate  
27 sentence and the court concurs with the jury determination  
28 ~~that--there--are--no--mitigating--factors--sufficient--to--preclude~~  
29 ~~the--imposition--of--the--death--sentence,~~ the court shall  
30 sentence the defendant to death. If the court does not concur  
31 with the jury determination that death is the appropriate  
32 sentence, the court shall set forth reasons in writing and  
33 shall then sentence the defendant to a term of natural life  
34 imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 If Unless the jury determines unanimously, after weighing  
3 the factors in aggravation and mitigation, that death is not  
4 the appropriate sentence, finds that there are no mitigating  
5 factors sufficient to preclude the imposition of the death  
6 sentence the court shall sentence the defendant to a term of  
7 natural life imprisonment under Chapter V of the Unified Code  
8 of Corrections.

9 (h) Procedure - No Jury.

10 In a proceeding before the court alone, if the court  
11 finds that none of the factors found in subsection (b)  
12 exists, the court shall sentence the defendant to a term of  
13 imprisonment under Chapter V of the Unified Code of  
14 Corrections.

15 If the Court determines that one or more of the factors  
16 set forth in subsection (b) exists, the Court shall consider  
17 any aggravating and mitigating factors as indicated in  
18 subsection (c). If the Court determines, after weighing the  
19 factors in aggravation and mitigation, that death is the  
20 appropriate sentence ~~that there are no mitigating factors~~  
21 ~~sufficient to preclude the imposition of the death sentence,~~  
22 the Court shall sentence the defendant to death.

23 If Unless the court finds that there are no mitigating  
24 factors sufficient to preclude the imposition of the sentence  
25 of death is not the appropriate sentence, the court shall  
26 sentence the defendant to a term of natural life imprisonment  
27 under Chapter V of the Unified Code of Corrections.

28 (i) Appellate Procedure.

29 The conviction and sentence of death shall be subject to  
30 automatic review by the Supreme Court. Such review shall be  
31 in accordance with rules promulgated by the Supreme Court.  
32 Upon the request of the defendant, the Supreme Court must  
33 determine whether the sentence was imposed due to some  
34 arbitrary factor; whether an independent weighing of the

1 aggravating and mitigating circumstances indicates death was  
2 the proper sentence; and whether the sentence of death was  
3 excessive or disproportionate to the penalty imposed in  
4 similar cases. The Supreme Court may order the collection of  
5 data and information to support the review required by this  
6 subsection (i).

7 (j) Disposition of reversed death sentence.

8 In the event that the death penalty in this Act is held  
9 to be unconstitutional by the Supreme Court of the United  
10 States or of the State of Illinois, any person convicted of  
11 first degree murder shall be sentenced by the court to a term  
12 of imprisonment under Chapter V of the Unified Code of  
13 Corrections.

14 In the event that any death sentence pursuant to the  
15 sentencing provisions of this Section is declared  
16 unconstitutional by the Supreme Court of the United States or  
17 of the State of Illinois, the court having jurisdiction over  
18 a person previously sentenced to death shall cause the  
19 defendant to be brought before the court, and the court shall  
20 sentence the defendant to a term of imprisonment under  
21 Chapter V of the Unified Code of Corrections.

22 (k) Judges trained to try capital cases.

23 The chief judge of the circuit shall require each judge  
24 assigned to try capital cases in the circuit to receive  
25 periodic training in the following areas, and shall retain  
26 experts on these subjects to conduct training and prepare  
27 training manuals on those topics:

28 (1) The risks of false testimony by in-custody  
29 informants.

30 (2) The risks of false testimony by accomplice  
31 witnesses.

32 (3) The dangers of tunnel vision or confirmatory  
33 bias.

34 (4) The risks of wrongful convictions in homicide

1 cases.

2 (5) Police investigative and interrogation methods.

3 (6) Police investigating and reporting of  
4 exculpatory evidence.

5 (7) Forensic evidence.

6 (8) The risks of false confessions.

7 (1) Prosecutors and defense attorneys training in  
8 capital cases.

9 Each prosecutor and defense attorney certified by the  
10 Illinois Supreme Court under Supreme Court Rule 714 as a  
11 member of the Capital Litigation Trial Bar shall receive  
12 periodic training in the following areas, and the Supreme  
13 Court shall retain experts on these subjects to conduct  
14 training and prepare training manuals on those topics:

15 (1) The risks of false testimony by in-custody  
16 informants.

17 (2) The risks of false testimony by accomplice  
18 witnesses.

19 (3) The dangers of tunnel vision or confirmatory  
20 bias.

21 (4) The risks of wrongful convictions in homicide  
22 cases.

23 (5) Police investigative and interrogation methods.

24 (6) Police investigating and reporting of  
25 exculpatory evidence.

26 (7) Forensic evidence.

27 (8) The risks of false confessions.

28 (Source: P.A. 91-357, eff. 7-29-99; 91-434, eff. 1-1-00;  
29 92-854, eff. 12-5-02.)

30 (720 ILCS 5/14-3) (from Ch. 38, par. 14-3)

31 Sec. 14-3. Exemptions. The following activities shall  
32 be exempt from the provisions of this Article:

33 (a) Listening to radio, wireless and television

1 communications of any sort where the same are publicly made;

2 (b) Hearing conversation when heard by employees of any  
3 common carrier by wire incidental to the normal course of  
4 their employment in the operation, maintenance or repair of  
5 the equipment of such common carrier by wire so long as no  
6 information obtained thereby is used or divulged by the  
7 hearer;

8 (c) Any broadcast by radio, television or otherwise  
9 whether it be a broadcast or recorded for the purpose of  
10 later broadcasts of any function where the public is in  
11 attendance and the conversations are overheard incidental to  
12 the main purpose for which such broadcasts are then being  
13 made;

14 (d) Recording or listening with the aid of any device to  
15 any emergency communication made in the normal course of  
16 operations by any federal, state or local law enforcement  
17 agency or institutions dealing in emergency services,  
18 including, but not limited to, hospitals, clinics, ambulance  
19 services, fire fighting agencies, any public utility,  
20 emergency repair facility, civilian defense establishment or  
21 military installation;

22 (e) Recording the proceedings of any meeting required to  
23 be open by the Open Meetings Act, as amended;

24 (f) Recording or listening with the aid of any device to  
25 incoming telephone calls of phone lines publicly listed or  
26 advertised as consumer "hotlines" by manufacturers or  
27 retailers of food and drug products. Such recordings must be  
28 destroyed, erased or turned over to local law enforcement  
29 authorities within 24 hours from the time of such recording  
30 and shall not be otherwise disseminated. Failure on the part  
31 of the individual or business operating any such recording or  
32 listening device to comply with the requirements of this  
33 subsection shall eliminate any civil or criminal immunity  
34 conferred upon that individual or business by the operation

1 of this Section;

2 (g) With prior notification to the State's Attorney of  
3 the county in which it is to occur, recording or listening  
4 with the aid of any device to any conversation where a law  
5 enforcement officer, or any person acting at the direction of  
6 law enforcement, is a party to the conversation and has  
7 consented to it being intercepted or recorded under  
8 circumstances where the use of the device is necessary for  
9 the protection of the law enforcement officer or any person  
10 acting at the direction of law enforcement, in the course of  
11 an investigation of a forcible felony, a felony violation of  
12 the Illinois Controlled Substances Act, a felony violation of  
13 the Cannabis Control Act, or any "streetgang related" or  
14 "gang-related" felony as those terms are defined in the  
15 Illinois Streetgang Terrorism Omnibus Prevention Act. Any  
16 recording or evidence derived as the result of this exemption  
17 shall be inadmissible in any proceeding, criminal, civil or  
18 administrative, except (i) where a party to the conversation  
19 suffers great bodily injury or is killed during such  
20 conversation, or (ii) when used as direct impeachment of a  
21 witness concerning matters contained in the interception or  
22 recording. The Director of the Department of State Police  
23 shall issue regulations as are necessary concerning the use  
24 of devices, retention of tape recordings, and reports  
25 regarding their use;

26 (g-5) With approval of the State's Attorney of the  
27 county in which it is to occur, recording or listening with  
28 the aid of any device to any conversation where a law  
29 enforcement officer, or any person acting at the direction of  
30 law enforcement, is a party to the conversation and has  
31 consented to it being intercepted or recorded in the course  
32 of an investigation of any offense defined in Article 29D of  
33 this Code. In all such cases, an application for an order  
34 approving the previous or continuing use of an eavesdropping

1 device must be made within 48 hours of the commencement of  
2 such use. In the absence of such an order, or upon its  
3 denial, any continuing use shall immediately terminate. The  
4 Director of State Police shall issue rules as are necessary  
5 concerning the use of devices, retention of tape recordings,  
6 and reports regarding their use.

7 Any recording or evidence obtained or derived in the  
8 course of an investigation of any offense defined in Article  
9 29D of this Code shall, upon motion of the State's Attorney  
10 or Attorney General prosecuting any violation of Article 29D,  
11 be reviewed in camera with notice to all parties present by  
12 the court presiding over the criminal case, and, if ruled by  
13 the court to be relevant and otherwise admissible, it shall  
14 be admissible at the trial of the criminal case.

15 This subsection (g-5) is inoperative on and after January  
16 1, 2005. No conversations recorded or monitored pursuant to  
17 this subsection (g-5) shall be inadmissible in a court of law  
18 by virtue of the repeal of this subsection (g-5) on January  
19 1, 2005.

20 (h) Recordings made simultaneously with a video  
21 recording of an oral conversation between a peace officer,  
22 who has identified his or her office, and a person stopped  
23 for an investigation of an offense under the Illinois Vehicle  
24 Code;

25 (i) Recording of a conversation made by or at the  
26 request of a person, not a law enforcement officer or agent  
27 of a law enforcement officer, who is a party to the  
28 conversation, under reasonable suspicion that another party  
29 to the conversation is committing, is about to commit, or has  
30 committed a criminal offense against the person or a member  
31 of his or her immediate household, and there is reason to  
32 believe that evidence of the criminal offense may be obtained  
33 by the recording; and

34 (j) The use of a telephone monitoring device by either

1 (1) a corporation or other business entity engaged in  
2 marketing or opinion research or (2) a corporation or other  
3 business entity engaged in telephone solicitation, as defined  
4 in this subsection, to record or listen to oral telephone  
5 solicitation conversations or marketing or opinion research  
6 conversations by an employee of the corporation or other  
7 business entity when:

8 (i) the monitoring is used for the purpose of  
9 service quality control of marketing or opinion research  
10 or telephone solicitation, the education or training of  
11 employees or contractors engaged in marketing or opinion  
12 research or telephone solicitation, or internal research  
13 related to marketing or opinion research or telephone  
14 solicitation; and

15 (ii) the monitoring is used with the consent of at  
16 least one person who is an active party to the marketing  
17 or opinion research conversation or telephone  
18 solicitation conversation being monitored.

19 No communication or conversation or any part, portion, or  
20 aspect of the communication or conversation made, acquired,  
21 or obtained, directly or indirectly, under this exemption  
22 (j), may be, directly or indirectly, furnished to any law  
23 enforcement officer, agency, or official for any purpose or  
24 used in any inquiry or investigation, or used, directly or  
25 indirectly, in any administrative, judicial, or other  
26 proceeding, or divulged to any third party.

27 When recording or listening authorized by this subsection  
28 (j) on telephone lines used for marketing or opinion research  
29 or telephone solicitation purposes results in recording or  
30 listening to a conversation that does not relate to marketing  
31 or opinion research or telephone solicitation; the person  
32 recording or listening shall, immediately upon determining  
33 that the conversation does not relate to marketing or opinion  
34 research or telephone solicitation, terminate the recording

1 or listening and destroy any such recording as soon as is  
2 practicable.

3 Business entities that use a telephone monitoring or  
4 telephone recording system pursuant to this exemption (j)  
5 shall provide current and prospective employees with notice  
6 that the monitoring or recordings may occur during the course  
7 of their employment. The notice shall include prominent  
8 signage notification within the workplace.

9 Business entities that use a telephone monitoring or  
10 telephone recording system pursuant to this exemption (j)  
11 shall provide their employees or agents with access to  
12 personal-only telephone lines which may be pay telephones,  
13 that are not subject to telephone monitoring or telephone  
14 recording.

15 For the purposes of this subsection (j), "telephone  
16 solicitation" means a communication through the use of a  
17 telephone by live operators:

- 18 (i) soliciting the sale of goods or services;
- 19 (ii) receiving orders for the sale of goods or  
20 services;
- 21 (iii) assisting in the use of goods or services; or
- 22 (iv) engaging in the solicitation, administration,  
23 or collection of bank or retail credit accounts.

24 For the purposes of this subsection (j), "marketing or  
25 opinion research" means a marketing or opinion research  
26 interview conducted by a live telephone interviewer engaged  
27 by a corporation or other business entity whose principal  
28 business is the design, conduct, and analysis of polls and  
29 surveys measuring the opinions, attitudes, and responses of  
30 respondents toward products and services, or social or  
31 political issues, or both; and

32 (k) Recording the interrogation or statement of a person  
33 in custody for first degree murder or a witness in a first  
34 degree murder case, when the person in custody or witness

1 knows the interrogation is being conducted by a law  
2 enforcement officer or prosecutor. For the purposes of this  
3 Section, "interrogation of a person in custody" means any  
4 interrogation during which the person being interrogated is  
5 not free to leave and the person is being asked questions  
6 relevant to the first degree murder investigation.

7 (Source: P.A. 91-357, eff. 7-29-99; 92-854, eff. 12-5-02.)

8 Section 35. The Code of Criminal Procedure of 1963 is  
9 amended by changing Sections 114-11, 114-13, 115-19, 116-3,  
10 122-1, and 122-2.1 and by adding Sections 103-10, 103-11,  
11 108-15, 113-8, 114-15, 114-16, 115-16.1, and 115-21 and  
12 Articles 106F, 106G, and 107A as follows:

13 (725 ILCS 5/103-10 new)

14 Sec. 103-10. Ascertaining suspect's mental capacity in  
15 homicide cases. Before conducting an interrogation of a  
16 suspect in a homicide case, the peace officer shall make a  
17 reasonable attempt to determine the suspect's mental capacity  
18 and if the suspect reasonably appears to the officer to be  
19 mentally retarded, the peace officer may only ask the suspect  
20 nonleading questions and shall be prohibited from conveying  
21 to the suspect the impression that the officer believes that  
22 the suspect is guilty of the homicide.

23 (725 ILCS 5/103-11 new)

24 Sec. 103-11. Homicide cases; videotaping of statements.  
25 If a peace officer interrogates a person suspected of an  
26 offense under Article 9 of the Criminal Code of 1961 and if  
27 any of the statements made by the suspect in response to the  
28 peace officer's questions are not videotaped, the police  
29 officer shall repeat the questions asked of the suspect and  
30 videotape the questions and answers.

(725 ILCS 5/ Art. 106F heading new)

ARTICLE 106F. ELECTRONIC RECORDING OF WITNESS  
INTERVIEWS

(725 ILCS 5/106F-5 new)

Sec. 106F-5. Electronic recording of witness interviews in homicide cases. A peace officer who interviews a significant witness in a homicide case shall electronically record the interview conducted of the significant witness if it is reasonably foreseeable that the testimony may be challenged at trial.

(725 ILCS 5/106G Art. 106G heading new)

ARTICLE 106G. VIDEOTAPING OF CUSTODIAL INTERROGATIONS IN  
HOMICIDE CASES

(725 ILCS 5/106G-5 new)

Sec. 106G-5. Videotaping of custodial interrogations in homicide cases.

(a) In this Section:

"Custodial interrogation" means any interrogation during which the person being interrogated is not free to leave and a question is asked that is designed to elicit an incriminating response.

"Place of detention" means a facility under the control of a law enforcement agency.

(b) A custodial interrogation at a police station or other place of detention of a suspect in a homicide case shall be videotaped. The videotaping shall not be limited to the statements made by the suspect following the interrogation but shall include the entire interrogation process.

(c) In circumstances when videotaping the suspect is not practical, an audiotape of the custodial interrogation may be

1 made as an alternative to a video recording. Police  
 2 investigators in homicide cases shall carry tape recorders to  
 3 audiotape custodial interrogations at places other than  
 4 police stations or places of detention.

5 (725 ILCS 5/Art. 107A heading new)

6 ARTICLE 107A. LINEUP AND PHOTO SPREAD PROCEDURES  
 7 IN HOMICIDE CASES

8 (725 ILCS 5/107A-5 new)

9 Sec. 107A-5. Lineup and photo spread procedures in  
 10 homicide cases.

11 (a) For a homicide offense alleged to have been  
 12 committed on or after the effective date of this amendatory  
 13 Act of the 93rd General Assembly, the lineup or photo spread  
 14 shall be conducted to insure that all persons in the lineup  
 15 or photo spread fit the general description of the suspect.

16 (b) Whenever possible, the lineup or photo spread  
 17 administrator in a homicide case shall be someone who is not  
 18 aware of which member of the lineup or photo spread is the  
 19 suspect in the case. Prior to presenting the lineup or photo  
 20 spread, the lineup or photo spread administrator shall:

21 (1) inform the witness that the perpetrator may or  
 22 may not be among those shown, and the witness should not  
 23 feel compelled to make an identification; and

24 (2) inform the witness that he or she should not  
 25 assume that the lineup or photo spread administrator  
 26 knows which person is the suspect in the case.

27 (c) During the lineup or photo spread, the lineup or  
 28 photo spread administrator shall ask the witness to state in  
 29 his or her own words how sure he or she is that the person  
 30 identified is the actual suspect, and make the witness's  
 31 words part of the record.

32 (d) For any first degree murder alleged to have been

1 committed on or after the effective date of this amendatory  
2 Act of the 93rd General Assembly the lineup identification  
3 procedure shall be presented in the sequential method, in  
4 which a witness is shown lineup participants one at a time.  
5 The witness shall be requested to state whether the  
6 individual shown is the perpetrator of the first degree  
7 murder, prior to viewing the next lineup participant. Only  
8 one member of the lineup shall be a suspect, and the  
9 remainder shall be "fillers" who are not suspects, but fit  
10 the general description of the suspect.

11 (e) This Section applies to any live lineups in homicide  
12 cases that are composed and presented at a police station,  
13 and to all photo lineups in homicide cases regardless of  
14 where presented.

15 (725 ILCS 5/108-15 new)

16 Sec. 108-15. Maintenance of evidence.

17 (a) A law enforcement agency shall list on schedules all  
18 existing items of relevant evidence collected in a criminal  
19 investigation, including exculpatory evidence, and the  
20 location of that evidence.

21 (b) Each law enforcement agency must assign to specific  
22 peace officers or employees of the law enforcement agency the  
23 duty to maintain and list the evidence and the persons  
24 assigned to this duty must certify their compliance with  
25 subsection (a) to the prosecutor assigned to prosecute the  
26 case.

27 (c) Each law enforcement agency must give copies of the  
28 schedules to the prosecutor assigned to prosecute the case.

29 (d) The law enforcement agency must give the prosecutor  
30 access to all investigatory materials in its possession.

31 (e) In this Section, "law enforcement agency" means the  
32 Department of State Police, the Office of the county sheriff,  
33 a municipal police department, or any other agency whose

1 officers are vested by law to make arrests in criminal cases  
2 and seize and maintain evidence for trial of a criminal case;  
3 and "prosecutor" means a State's Attorney, assistant State's  
4 Attorney, Attorney General, assistant or deputy Attorney  
5 General, or a special assistant Attorney General or special  
6 assistant State's Attorney who is assigned to prosecute a  
7 criminal case.

8 (725 ILCS 5/113-8 new)

9 Sec. 113-8. Notice of intention to seek or decline the  
10 death penalty; State Death Penalty Review Committee.

11 (a) State Death Penalty Review Committee. The State's  
12 Attorney or Attorney General shall provide notice of the  
13 State's intention to seek or decline the death penalty by  
14 filing a Notice of Intent to Seek or Decline the Death  
15 Penalty as soon as practicable. In no event shall the filing  
16 of the notice be later than 120 days after arraignment,  
17 unless, for good cause shown, the court directs otherwise. A  
18 notice of intent to seek the death penalty shall also include  
19 all of the statutory aggravating factors enumerated in  
20 subsection (b) of Section 9-1 of the Criminal Code of 1961  
21 which the State intends to introduce during the death penalty  
22 sentencing hearing.

23 (b) The State's Attorney must also submit the decision  
24 to seek the death penalty to the State Death Penalty Review  
25 Committee for approval. The State Death Penalty Review  
26 Committee is created effective January 1, 2004. The Review  
27 Committee shall be composed of 5 voting members consisting of  
28 the Attorney General or his or her designee, the State's  
29 Attorney of Cook County or his or her designee, the president  
30 of the Illinois State's Attorney's Association, a State's  
31 Attorney appointed by the Governor, and a retired judge  
32 appointed by the Governor. The Governor may appoint an  
33 alternate member and shall only participate and vote in the

1 event of a tie vote. The retired judge member shall have  
2 experience in criminal law and preferably appellate review of  
3 criminal cases. The Attorney General and Cook County State's  
4 Attorney shall serve during their respective term of office.  
5 The president of the State's Attorney's Association shall  
6 serve for one year concurrent with the elected term as  
7 president of the State's Attorney's Association. The State's  
8 Attorney appointed by the Governor shall serve for one year  
9 and the retired judge member shall serve for 4 years. The  
10 alternate member shall serve at the pleasure of the Governor.  
11 In the event of a vacancy of a member appointed by the  
12 Governor, the appointment to fill the vacancy shall be made  
13 in the same manner as the original appointment. The appointed  
14 members shall serve until their successor is appointed and  
15 qualified. The Attorney General or his or designee shall  
16 serve as chairman.

17 (c) The State Death Penalty Review Committee must  
18 develop standards to assist State's Attorneys in the exercise  
19 of discretion in seeking the death penalty on a first degree  
20 murder charge. The Review Committee must also approve a  
21 State's Attorney's decision to seek the death penalty in a  
22 first degree murder case. The review must include the  
23 appropriateness of the sentence of death upon conviction and  
24 whether the decision is consistent with the application of  
25 the death penalty in other counties. The Review Committee  
26 must consider information submitted by the State's Attorney  
27 and defense counsel that is relevant to the review.  
28 Information submitted that is not otherwise subject to  
29 discovery at this stage of the court proceedings or for which  
30 confidentiality is necessary for security of any individual,  
31 is confidential and not subject to disclosure outside of the  
32 Review Committee.

33 (d) The approval shall be pursuant to a vote of 3  
34 members of the Committee; however, the Attorney General or a

1 State's Attorney must recuse himself or herself from voting  
2 on any case prosecuted by his or her office. The review and  
3 comment is confidential and shall only be disclosed to:

4 (1) the submitting State's Attorney;

5 (2) the defendant's attorney; and

6 (3) the Governor, upon request, after the Supreme  
7 Court has ordered the final execution date.

8 (e) The Attorney General and the Illinois State's  
9 Attorneys Association shall adopt recommendations as to the  
10 procedures that State's Attorneys should follow in deciding  
11 whether or not to seek the death penalty in a first degree  
12 murder case. The failure of a State's Attorney to follow the  
13 adopted procedures is not a ground to have the case  
14 decertified as a death penalty case or to have any death  
15 penalty sentence vacated.

16 (725 ILCS 5/114-11) (from Ch. 38, par. 114-11)

17 Sec. 114-11. Motion to Suppress Confession.

18 (a) Prior to the trial of any criminal case a defendant  
19 may move to suppress as evidence any confession given by him  
20 on the ground that it was not voluntary.

21 (b) The motion shall be in writing and state facts  
22 showing wherein the confession is involuntary.

23 (c) If the allegations of the motion state facts which,  
24 if true, show that the confession was not voluntarily made  
25 the court shall conduct a hearing into the merits of the  
26 motion.

27 (d) The burden of going forward with the evidence and  
28 the burden of proving that a confession was voluntary shall  
29 be on the State. Objection to the failure of the State to  
30 call all material witnesses on the issue of whether the  
31 confession was voluntary must be made in the trial court.

32 (e) The motion shall be made only before a court with  
33 jurisdiction to try the offense.

1 (f) The issue of the admissibility of the confession  
2 shall not be submitted to the jury. The circumstances  
3 surrounding the making of the confession may be submitted to  
4 the jury as bearing upon the credibility or the weight to be  
5 given to the confession.

6 (g) The motion shall be made before trial unless  
7 opportunity therefor did not exist or the defendant was not  
8 aware of the grounds for the motion. If the motion is made  
9 during trial, and the court determines that the motion is not  
10 untimely, and the court conducts a hearing on the merits and  
11 enters an order suppressing the confession, the court shall  
12 terminate the trial with respect to every defendant who was a  
13 party to the hearing and who was within the scope of the  
14 order of suppression, without further proceedings, unless the  
15 State files a written notice that there will be no  
16 interlocutory appeal from such order of suppression. In the  
17 event of such termination, the court shall proceed with the  
18 trial of other defendants not thus affected. Such termination  
19 of trial shall be proper and shall not bar subsequent  
20 prosecution of the identical charges and defendants; however,  
21 if after such termination the State fails to prosecute the  
22 interlocutory appeal until a determination of the merits of  
23 the appeal by the reviewing court, the termination shall be  
24 improper within the meaning of subparagraph (a) (3) of  
25 Section 3--4 of the "Criminal Code of 1961", approved July  
26 28, 1961, as amended, and subsequent prosecution of such  
27 defendants upon such charges shall be barred.

28 (h) In capital cases, the court may also conduct a  
29 hearing pursuant to Section 115-21 on the admissibility of  
30 the statement made by the defendant where the statement has  
31 not been recorded by electronic video or audio, regardless of  
32 whether the defense requests such a hearing.

33 (Source: P. A. 76-1096.)

1 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

2 Sec. 114-13. Discovery in criminal cases.

3 (a) Discovery procedures in criminal cases shall be in  
4 accordance with Supreme Court Rules.

5 (b) Discovery deposition procedures applicable in cases  
6 for which the death penalty may be imposed shall be in  
7 accordance with Supreme Court Rules and this subsection (b),  
8 unless the State has given notice of its intention not to  
9 seek the death penalty.

10 (1) The intent of this subsection is to (i) ensure  
11 that capital defendants receive fair and impartial trials  
12 and sentencing hearings within the courts of this State  
13 and (ii) minimize the occurrence of error to the maximum  
14 extent feasible by identifying and correcting with due  
15 promptness any error that may occur.

16 (2) A party may, with leave of court upon a showing  
17 of good cause, take the discovery deposition upon oral  
18 questions of any person disclosed as a witness as  
19 provided by law or Supreme Court Rule. In determining  
20 whether to allow a deposition, the court should consider  
21 (i) the consequences to the party if the deposition is  
22 not allowed, (ii) the complexities of the issues  
23 involved, (iii) the complexity of the testimony of the  
24 witness, and (iv) the other opportunities available to  
25 the party to discover the information sought by  
26 deposition. Under no circumstances, however, may the  
27 defendant be deposed.

28 (3) The taking of depositions shall be in  
29 accordance with rules providing for the taking of  
30 depositions in civil actions, and the order for the  
31 taking of a deposition may provide that any designated  
32 books, papers, documents, or tangible objects, not  
33 privileged, be produced at the same time and place.

34 (4) A defendant shall have no right to be

1 physically present at a discovery deposition. If there is  
2 any concern regarding witness safety, the court may  
3 require that the deposition be held in a place or manner  
4 that will ensure the security of the witness. The court  
5 may also issue protective orders to restrict the use and  
6 disclosure of information provided by a witness.

7 (5) Absent good cause shown to the court,  
8 depositions shall be completed within 90 days after the  
9 disclosure of witnesses. The parties shall have the right  
10 to compel depositions under this subsection by subpoena.  
11 No witness may be deposed more than once, except by leave  
12 of the court upon a showing of good cause.

13 (6) If the defendant is indigent, the costs of  
14 taking depositions shall be paid by the county where the  
15 criminal charge is initiated with reimbursement to the  
16 county from the Capital Litigation Trust Fund. If the  
17 defendant is not indigent, the costs shall be allocated  
18 as in civil actions.

19 (Source: Laws 1963, p. 2836.)

20 (725 ILCS 5/114-15 new)

21 Sec. 114-15. Motion for genetic marker groupings  
22 comparison analysis.

23 (a) A defendant may make a motion for a court order  
24 before trial for comparison analysis by the Department of  
25 State Police with those genetic marker groupings maintained  
26 under subsection (f) of Section 5-4-3 of the Unified Code of  
27 Corrections if the defendant meets all of the following  
28 requirements:

29 (1) The defendant is charged with any offense.

30 (2) The defendant seeks for the Department of State  
31 Police to identify genetic marker groupings from evidence  
32 collected by criminal justice agencies pursuant to the  
33 alleged offense.

1           (3) The defendant seeks comparison analysis of  
2 genetic marker groupings of the evidence under  
3 subdivision (2) to those of the defendant, to those of  
4 other forensic evidence, and to those maintained under  
5 subsection (f) of Section 5-4-3 of the Unified Code of  
6 Corrections.

7           (4) Genetic marker grouping analysis must be  
8 performed by a laboratory compliant with the quality  
9 assurance standards required by the Department of State  
10 Police for genetic marker grouping analysis comparisons.

11           (5) Reasonable notice of the motion shall be served  
12 upon the State.

13           (b) The Department of State Police may promulgate rules  
14 for the types of comparisons performed and the quality  
15 assurance standards required for submission of genetic marker  
16 groupings. The provisions of the Administrative Review Law  
17 shall apply to all actions taken under the rules so  
18 promulgated.

19           (725 ILCS 5/114-16 new)

20           Sec. 114-16. Motion to preclude death penalty based upon  
21 mental retardation.

22           (a) A defendant charged with first degree murder may  
23 make a motion prior to trial to preclude the imposition of  
24 the death penalty based upon the mental retardation of the  
25 defendant. The motion shall be in writing and shall state  
26 facts to demonstrate the mental retardation of the defendant.  
27 As used in this Section, "mental retardation" means:

28           (1) having significantly subaverage general  
29 intellectual functioning as evidence by a functional  
30 intelligence quotient (I.Q.) of 70 or below; and

31           (2) having deficits in adaptive behavior.

32 The mental retardation must have been manifested during the  
33 developmental period, or by 18 years of age.

1        (b) Notwithstanding any provision of law to the  
2 contrary, a defendant with mental retardation at the time of  
3 committing first degree murder shall not be sentenced to  
4 death.

5        (c) The burden of going forward with the evidence and  
6 the burden of proving the defendant's mental retardation by a  
7 preponderance of the evidence is upon the defendant. The  
8 determination of whether the defendant was mentally retarded  
9 at the time of the offense of first degree murder shall be  
10 made by the court after a hearing.

11        (d) If the issue of mental retardation is raised prior  
12 to trial and the court determines that the defendant is not a  
13 person with mental retardation, the defendant shall be  
14 entitled to offer evidence to the trier of fact of diminished  
15 intellectual capacity as a mitigating circumstance pursuant  
16 to clause (c)(7) of Section 9-1 of the Criminal Code of 1961.

17        (f) The determination by the trier of fact on the  
18 defendant's motion shall not be appealable by interlocutory  
19 appeal, but may be a basis of appeal by either the State or  
20 defendant following the sentencing stage of the trial.

21        (725 ILCS 5/115-16.1 new)

22        Sec. 115-16.1. Witness qualification in first degree  
23 murder trial.

24        (a) In a prosecution for first degree murder where the  
25 State has given notice of its intention to seek the death  
26 penalty, the prosecution must promptly notify the court and  
27 the defendant's attorney of the intention to introduce  
28 testimony at trial from a person who is in custody or who was  
29 in custody at the time of the factual matters to which the  
30 person will testify. The notice to the defendant's attorney  
31 must include the identification, criminal history, and  
32 background of the witness. The prosecution must also promptly  
33 notify the defendant's attorney of any discussion,

1 inducement, benefit, or agreement between that witness and a  
2 law enforcement agency, officer, or prosecutor for that  
3 witness.

4 (b) After notice has been given to the court pursuant to  
5 subsection (a), the court must prior to trial conduct an  
6 evidentiary hearing to determine the reliability and  
7 admissibility of the testimony of the witness. The  
8 prosecution has the burden of proving by a preponderance of  
9 the evidence the reliability of the testimony of the witness.  
10 In making its determination, the court may consider:

11 (1) the specific statements or facts to which the  
12 witness will testify;

13 (2) the time, place, and other circumstances  
14 regarding the statements or facts to which the witness  
15 will testify;

16 (3) any discussion, inducement, benefit, or  
17 agreement between the witness and a law enforcement  
18 agency or officer for that witness;

19 (4) the criminal history of the witness;

20 (5) whether the witness has ever recanted his or  
21 her testimony;

22 (6) other criminal cases in which the witness has  
23 testified;

24 (7) the presence or absence of any relationship  
25 between the accused and the witness; and

26 (8) any other evidence relevant to the credibility  
27 of the witness.

28 (725 ILCS 5/115-19)

29 Sec. 115-19. Polygraph.

30 (a) In the course of a criminal trial the court shall  
31 not require, request, or suggest that the defendant submit to  
32 a polygraphic detection deception test, commonly known as a  
33 lie detector test, to questioning under the effect of

1 thiopental sodium, or to any other test or questioning by  
2 means of a mechanical device or chemical substance.

3 (b) The results of a polygraph examination are  
4 inadmissible as evidence in a capital case both during the  
5 trial of the case and during the separate sentencing hearing.

6 (Source: P.A. 89-234, eff. 1-1-96.)

7 (725 ILCS 5/115-21 new)

8 Sec. 115-21. Peace officer training. Each peace officer  
9 involved in investigating a homicide case shall receive  
10 periodic training in the following areas and each law  
11 enforcement agency shall retain experts on these topics to  
12 conduct the training and prepare training manuals for use by  
13 peace officers:

14 (1) the risk of false testimony by in-custody  
15 informants;

16 (2) the risks of false testimony by accomplice  
17 witnesses;

18 (3) the dangers of tunnel vision or confirmatory bias;

19 (4) the risks of wrongful convictions in homicide cases;

20 (5) police investigative and interrogation methods;

21 (6) forensic evidence; and

22 (7) the risks of false confessions.

23 (725 ILCS 5/116-3)

24 Sec. 116-3. Motion for fingerprint or forensic testing  
25 not available at trial regarding actual innocence.

26 (a) A defendant may make a motion before the trial court  
27 that entered the judgment of conviction in his or her case  
28 for the performance of fingerprint or forensic DNA testing,  
29 including comparison analysis of genetic marker groupings of  
30 the evidence collected by criminal justice agencies pursuant  
31 to the alleged offense, to those of the defendant, to those  
32 of other forensic evidence, and to those maintained under

1 subsection (f) of Section 5-4-3 of the Unified Code of  
 2 Corrections, on evidence that was secured in relation to the  
 3 trial which resulted in his or her conviction, but which was  
 4 not subject to the testing which is now requested because the  
 5 technology for the testing was not available at the time of  
 6 trial. Reasonable notice of the motion shall be served upon  
 7 the State.

8 (b) The defendant must present a prima facie case that:

9 (1) identity was the issue in the trial which  
 10 resulted in his or her conviction; and

11 (2) the evidence to be tested has been subject to a  
 12 chain of custody sufficient to establish that it has not  
 13 been substituted, tampered with, replaced, or altered in  
 14 any material aspect.

15 (c) The trial court shall allow the testing under  
 16 reasonable conditions designed to protect the State's  
 17 interests in the integrity of the evidence and the testing  
 18 process upon a determination that:

19 (1) the result of the testing has the scientific  
 20 potential to produce new, noncumulative evidence  
 21 materially relevant to the defendant's assertion of  
 22 actual innocence that significantly advances the  
 23 defendant's claim of innocence;

24 (2) the testing requested employs a scientific  
 25 method generally accepted within the relevant scientific  
 26 community.

27 (Source: P.A. 90-141, eff. 1-1-98.)

28 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

29 Sec. 122-1. Petition in the trial court.

30 (a) Any person imprisoned in the penitentiary may  
 31 institute a proceeding under this Article if the person who  
 32 asserts that:

33 (1) in the proceedings which resulted in his or her

1 conviction there was a substantial denial of his or her  
2 rights under the Constitution of the United States or of  
3 the State of Illinois or both; or

4 (2) the death penalty was imposed and there is  
5 newly discovered evidence not available to the person at  
6 the time of the proceeding that resulted in his or her  
7 conviction that establishes the person's innocence.

8 (a-5) A proceeding under paragraph (2) of subsection (a)  
9 may be commenced at any time after the person's conviction  
10 notwithstanding any other provisions of ~~may-institute-a~~  
11 ~~proceeding-under~~ this Article. In such a proceeding regarding  
12 actual innocence, if the court determines the petition is  
13 frivolous or is patently without merit, it shall dismiss the  
14 petition in a written order, specifying the findings of fact  
15 and conclusions of law it made in reaching its decision.  
16 Such order of dismissal is a final judgment and shall be  
17 served upon the petitioner by certified mail within 10 days  
18 of its entry.

19 (b) The proceeding shall be commenced by filing with the  
20 clerk of the court in which the conviction took place a  
21 petition (together with a copy thereof) verified by  
22 affidavit. Petitioner shall also serve another copy upon the  
23 State's Attorney by any of the methods provided in Rule 7 of  
24 the Supreme Court. The clerk shall docket the petition for  
25 consideration by the court pursuant to Section 122-2.1 upon  
26 his or her receipt thereof and bring the same promptly to the  
27 attention of the court.

28 (c) Except as otherwise provided in subsection (a-5), if  
29 the petitioner is under sentence of death, no proceedings  
30 under this Article shall be commenced more than 6 months  
31 after the issuance of the mandate by the Supreme Court  
32 following affirmance of the defendant's direct appeal of the  
33 trial court verdict. In all other cases, no proceedings  
34 under this Article shall be commenced more than 6 months

1 after the denial of a petition for leave to appeal or the  
2 date for filing such a petition if none is filed or more than  
3 45 days after the defendant files his or her brief in the  
4 appeal of the sentence before the Illinois Supreme Court (or  
5 more than 45 days after the deadline for the filing of the  
6 defendant's brief with the Illinois Supreme Court if no brief  
7 is filed) or 3 years from the date of conviction, whichever  
8 is sooner, unless the petitioner alleges facts showing that  
9 the delay was not due to his or her culpable negligence.

10 (d) A person seeking relief by filing a petition under  
11 this Section must specify in the petition or its heading that  
12 it is filed under this Section. A trial court that has  
13 received a petition complaining of a conviction or sentence  
14 that fails to specify in the petition or its heading that it  
15 is filed under this Section need not evaluate the petition to  
16 determine whether it could otherwise have stated some grounds  
17 for relief under this Article.

18 (e) A proceeding under this Article may not be commenced  
19 on behalf of a defendant who has been sentenced to death  
20 without the written consent of the defendant, unless the  
21 defendant, because of a mental or physical condition, is  
22 incapable of asserting his or her own claim.

23 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
24 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

25 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

26 Sec. 122-2.1. (a) Within 90 days after the filing and  
27 docketing of each petition, the court shall examine such  
28 petition and enter an order thereon pursuant to this Section.

29 (1) If the petitioner is under sentence of death  
30 and is without counsel and alleges that he is without  
31 means to procure counsel, he shall state whether or not  
32 he wishes counsel to be appointed to represent him. If  
33 appointment of counsel is so requested, the court shall

1 appoint counsel if satisfied that the petitioner has no  
2 means to procure counsel.

3 (2) If the petitioner is sentenced to imprisonment  
4 and the court determines the petition is frivolous or is  
5 patently without merit, it shall dismiss the petition in  
6 a written order, specifying the findings of fact and  
7 conclusions of law it made in reaching its decision.  
8 Such order of dismissal is a final judgment and shall be  
9 served upon the petitioner by certified mail within 10  
10 days of its entry.

11 (b) If the petition is not dismissed pursuant to this  
12 Section, the court shall order the petition to be docketed  
13 for further consideration in accordance with Sections 122-4  
14 through 122-6. If the petitioner is under sentence of death,  
15 the court shall order the petition to be docketed for further  
16 consideration and hearing within one year of the filing of  
17 the petition.

18 (c) In considering a petition pursuant to this Section,  
19 the court may examine the court file of the proceeding in  
20 which the petitioner was convicted, any action taken by an  
21 appellate court in such proceeding and any transcripts of  
22 such proceeding.

23 (Source: P.A. 86-655; 87-904.)

24 Section 40. The State Appellate Defender Act is amended  
25 by changing Section 10 as follows:

26 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

27 Sec. 10. Powers and duties of State Appellate Defender.

28 (a) The State Appellate Defender shall represent  
29 indigent persons on appeal in criminal and delinquent minor  
30 proceedings, when appointed to do so by a court under a  
31 Supreme Court Rule or law of this State.

32 (b) The State Appellate Defender shall submit a budget

1 for the approval of the State Appellate Defender Commission.

2 (c) The State Appellate Defender may:

3 (1) maintain a panel of private attorneys available  
4 to serve as counsel on a case basis;

5 (2) establish programs, alone or in conjunction  
6 with law schools, for the purpose of utilizing volunteer  
7 law students as legal assistants;

8 (3) cooperate and consult with state agencies,  
9 professional associations, and other groups concerning  
10 the causes of criminal conduct, the rehabilitation and  
11 correction of persons charged with and convicted of  
12 crime, the administration of criminal justice, and, in  
13 counties of less than 1,000,000 population, study,  
14 design, develop and implement model systems for the  
15 delivery of trial level defender services, and make an  
16 annual report to the General Assembly;

17 (4) provide investigative services to appointed  
18 counsel and county public defenders;

19 (5) in cases in which a death sentence is an  
20 authorized disposition, provide trial counsel with the  
21 assistance of expert witnesses, investigators, and  
22 mitigation specialists from funds appropriated to the  
23 State Appellate Defender specifically for that purpose by  
24 the General Assembly. The Office of State Appellate  
25 Defender shall not be appointed to serve as trial counsel  
26 in capital cases.

27 (c-5) The Office of the State Appellate Defender shall  
28 disseminate on a Statewide basis the names and business  
29 addresses of licensed attorneys who are certified by the  
30 Illinois Supreme Court as members of the Capital Litigation  
31 Trial Bar under Supreme Court Rule 714.

32 (d) For each State fiscal year, the State Appellate  
33 Defender shall appear before the General Assembly and request  
34 appropriations to be made from the Capital Litigation Trust

1 Fund to the State Treasurer for the purpose of providing  
2 defense assistance in capital cases outside of Cook County.  
3 The State Appellate Defender may appear before the General  
4 Assembly at other times during the State's fiscal year to  
5 request supplemental appropriations from the Trust Fund to  
6 the State Treasurer.

7 (e) The requirement for reporting to the General  
8 Assembly shall be satisfied by filing copies of the report  
9 with the Speaker, the Minority Leader and the Clerk of the  
10 House of Representatives and the President, the Minority  
11 Leader and the Secretary of the Senate and the Legislative  
12 Research Unit, as required by Section 3.1 of the General  
13 Assembly Organization Act and filing such additional copies  
14 with the State Government Report Distribution Center for the  
15 General Assembly as is required under paragraph (t) of  
16 Section 7 of the State Library Act.

17 (Source: P.A. 91-589, eff. 1-1-00.)

18 Section 45. The Capital Crimes Litigation Act is  
19 amended by changing Sections 10, 15, and 19 as follows:

20 (725 ILCS 124/10)

21 (Section scheduled to be repealed on July 1, 2004)

22 Sec. 10. Court appointed trial counsel; compensation and  
23 expenses.

24 (a) This Section applies only to compensation and  
25 expenses of trial counsel appointed by the court as set forth  
26 in Section 5, other than public defenders, for the period  
27 after arraignment and so long as the State's Attorney has  
28 not, at any time, filed a certificate indicating he or she  
29 will not seek the death penalty or stated on the record in  
30 open court that the death penalty will not be sought.

31 (b) Appointed trial counsel shall be compensated upon  
32 presentment and certification by the circuit court of a claim

1 for services detailing the date, activity, and time duration  
2 for which compensation is sought. Compensation for appointed  
3 trial counsel may be paid at a reasonable rate not to exceed  
4 \$125 per hour.

5 Beginning in 2001, every January 20, the statutory rate  
6 prescribed in this subsection shall be automatically  
7 increased or decreased, as applicable, by a percentage equal  
8 to the percentage change in the consumer price index-u during  
9 the preceding 12-month calendar year. "Consumer price  
10 index-u" means the index published by the Bureau of Labor  
11 Statistics of the United States Department of Labor that  
12 measures the average change in prices of goods and services  
13 purchased by all urban consumers, United States city average,  
14 all items, 1982-84=100. The new rate resulting from each  
15 annual adjustment shall be determined by the State Treasurer  
16 and made available to the chief judge of each judicial  
17 circuit. Payment in excess of the limitations stated in this  
18 subsection (b) may be made if the trial court certifies that  
19 such payment is necessary to provide fair compensation for  
20 representation based upon customary charges in the relevant  
21 legal market for attorneys of similar skill, background, and  
22 experience. A trial court may entertain the filing of this  
23 verified statement before the termination of the cause and  
24 may order the provisional payment of sums during the pendency  
25 of the cause.

26 (c) Appointed trial counsel may also petition the court  
27 for certification of expenses for reasonable and necessary  
28 capital litigation expenses including, but not limited to,  
29 investigatory and other assistance, expert, forensic, and  
30 other witnesses, and mitigation specialists. Counsel may not  
31 petition for certification of expenses that may have been  
32 provided or compensated by the State Appellate Defender under  
33 item (c)(5) of Section 10 of the State Appellate Defender  
34 Act.

1 (d) Appointed trial counsel shall petition the court for  
2 certification of compensation and expenses under this Section  
3 periodically during the course of counsel's representation.  
4 If the court determines that the compensation and expenses  
5 should be paid from the Capital Litigation Trust Fund, the  
6 court shall certify, on a form created by the State  
7 Treasurer, that all or a designated portion of the amount  
8 requested is reasonable, necessary, and appropriate for  
9 payment from the Trust Fund. Certification of compensation  
10 and expenses by a court in any county other than Cook County  
11 shall be delivered by the court to the State Treasurer and  
12 paid by the State Treasurer directly from the Capital  
13 Litigation Trust Fund if there are sufficient moneys in the  
14 Trust Fund to pay the compensation and expenses.  
15 Certification of compensation and expenses by a court in Cook  
16 County shall be delivered by the court to the county  
17 treasurer and paid by the county treasurer from moneys  
18 granted to the county from the Capital Litigation Trust Fund.  
19 (Source: P.A. 91-589, eff. 1-1-00.)

20 (725 ILCS 124/15)

21 (Section scheduled to be repealed on July 1, 2004)

22 Sec. 15. Capital Litigation Trust Fund.

23 (a) The Capital Litigation Trust Fund is created as a  
24 special fund in the State Treasury. The Trust Fund shall be  
25 administered by the State Treasurer to provide moneys for the  
26 appropriations to be made, grants to be awarded, and  
27 compensation and expenses to be paid under this Act. All  
28 interest earned from the investment or deposit of moneys  
29 accumulated in the Trust Fund shall, under Section 4.1 of the  
30 State Finance Act, be deposited into the Trust Fund.

31 (b) Moneys deposited into the Trust Fund shall not be  
32 considered general revenue of the State of Illinois.

33 (c) Moneys deposited into the Trust Fund shall be used

1 exclusively for the purposes of providing funding for the  
2 prosecution and defense of capital cases as provided in this  
3 Act and shall not be appropriated, loaned, or in any manner  
4 transferred to the General Revenue Fund of the State of  
5 Illinois.

6 (d) Every fiscal year the State Treasurer shall transfer  
7 from the General Revenue Fund to the Capital Litigation Trust  
8 Fund an amount equal to the full amount of moneys  
9 appropriated by the General Assembly (both by original and  
10 supplemental appropriation), less any unexpended balance from  
11 the previous fiscal year, from the Capital Litigation Trust  
12 Fund for the specific purpose of making funding available for  
13 the prosecution and defense of capital cases. The Public  
14 Defender and State's Attorney in Cook County, the State  
15 Appellate Defender, the State's Attorneys Appellate  
16 Prosecutor, and the Attorney General shall make annual  
17 requests for appropriations from the Trust Fund.

18 (1) The Public Defender in Cook County shall  
19 request appropriations to the State Treasurer for  
20 expenses incurred by the Public Defender and for funding  
21 for private appointed defense counsel in Cook County.

22 (2) The State's Attorney in Cook County shall  
23 request an appropriation to the State Treasurer for  
24 expenses incurred by the State's Attorney.

25 (3) The State Appellate Defender shall request a  
26 direct appropriation from the Trust Fund for expenses  
27 incurred by the State Appellate Defender in providing  
28 assistance to trial attorneys under item (c)(5) of  
29 Section 10 of the State Appellate Defender Act and an  
30 appropriation to the State Treasurer for payments from  
31 the Trust Fund for the defense of cases in counties other  
32 than Cook County.

33 (4) The State's Attorneys Appellate Prosecutor  
34 shall request a direct appropriation from the Trust Fund

1 to pay expenses incurred by the State's Attorneys  
2 Appellate Prosecutor and an appropriation to the State  
3 Treasurer for payments from the Trust Fund for expenses  
4 incurred by State's Attorneys in counties other than Cook  
5 County.

6 (5) The Attorney General shall request a direct  
7 appropriation from the Trust Fund to pay expenses  
8 incurred by the Attorney General in assisting the State's  
9 Attorneys in counties other than Cook County.

10 The Public Defender and State's Attorney in Cook County,  
11 the State Appellate Defender, the State's Attorneys Appellate  
12 Prosecutor, and the Attorney General may each request  
13 supplemental appropriations from the Trust Fund during the  
14 fiscal year.

15 (e) Moneys in the Trust Fund shall be expended only as  
16 follows:

17 (1) To pay the State Treasurer's costs to  
18 administer the Trust Fund. The amount for this purpose  
19 may not exceed 5% in any one fiscal year of the amount  
20 otherwise appropriated from the Trust Fund in the same  
21 fiscal year.

22 (2) To pay the capital litigation expenses of trial  
23 defense including, but not limited to, investigatory and  
24 other assistance, expert, forensic, and other witnesses,  
25 and mitigation specialists, and grants and aid provided  
26 to public defenders or assistance to attorneys who have  
27 been appointed by the court to represent defendants who  
28 are charged with capital crimes.

29 (3) To pay the compensation of trial attorneys,  
30 other than public defenders, who have been appointed by  
31 the court to represent defendants who are charged with  
32 capital crimes.

33 (4) To provide State's Attorneys with funding for  
34 capital litigation expenses including, but not limited

1 to, investigatory and other assistance, including  
2 forensic testing under Section 116-3 of the Code of  
3 Criminal Procedure of 1963, and expert, forensic, and  
4 other witnesses necessary to prosecute capital cases.  
5 State's Attorneys in any county other than Cook County  
6 seeking funding for capital litigation expenses  
7 including, but not limited to, investigatory and other  
8 assistance, including forensic testing under Section  
9 116-3 of the Code of Criminal Procedure of 1963, and  
10 expert, forensic, or other witnesses under this Section  
11 may request that the State's Attorneys Appellate  
12 Prosecutor or the Attorney General, as the case may be,  
13 certify the expenses as reasonable, necessary, and  
14 appropriate for payment from the Trust Fund, on a form  
15 created by the State Treasurer. Upon certification of  
16 the expenses and delivery of the certification to the  
17 State Treasurer, the Treasurer shall pay the expenses  
18 directly from the Capital Litigation Trust Fund if there  
19 are sufficient moneys in the Trust Fund to pay the  
20 expenses.

21 (5) To provide financial support through the  
22 Attorney General pursuant to the Attorney General Act for  
23 the several county State's Attorneys outside of Cook  
24 County, but shall not be used to increase personnel for  
25 the Attorney General's Office.

26 (6) To provide financial support through the  
27 State's Attorneys Appellate Prosecutor pursuant to the  
28 State's Attorneys Appellate Prosecutor's Act for the  
29 several county State's Attorneys outside of Cook County,  
30 but shall not be used to increase personnel for the  
31 State's Attorneys Appellate Prosecutor.

32 (7) To provide financial support to the State  
33 Appellate Defender pursuant to the State Appellate  
34 Defender Act.

1 Moneys expended from the Trust Fund shall be in addition  
2 to county funding for Public Defenders and State's Attorneys,  
3 and shall not be used to supplant or reduce ordinary and  
4 customary county funding.

5 (f) Moneys in the Trust Fund shall be appropriated to  
6 the State Appellate Defender, the State's Attorneys Appellate  
7 Prosecutor, the Attorney General, and the State Treasurer.  
8 The State Appellate Defender shall receive an appropriation  
9 from the Trust Fund to enable it to provide assistance to  
10 appointed defense counsel throughout the State and to Public  
11 Defenders in counties other than Cook. The State's Attorneys  
12 Appellate Prosecutor and the Attorney General shall receive  
13 appropriations from the Trust Fund to enable them to provide  
14 assistance to State's Attorneys in counties other than Cook  
15 County. Moneys shall be appropriated to the State Treasurer  
16 to enable the Treasurer (i) to make grants to Cook County,  
17 (ii) to pay the expenses of Public Defenders and State's  
18 Attorneys in counties other than Cook County, (iii) to pay  
19 the expenses and compensation of appointed defense counsel in  
20 counties other than Cook County, and (iv) to pay the costs of  
21 administering the Trust Fund. All expenditures and grants  
22 made from the Trust Fund shall be subject to audit by the  
23 Auditor General.

24 (g) For Cook County, grants from the Trust Fund shall be  
25 made and administered as follows:

26 (1) For each State fiscal year, the State's  
27 Attorney and Public Defender must each make a separate  
28 application to the State Treasurer for capital litigation  
29 grants.

30 (2) The State Treasurer shall establish rules and  
31 procedures for grant applications. The rules shall  
32 require the Cook County Treasurer as the grant recipient  
33 to report on a periodic basis to the State Treasurer how  
34 much of the grant has been expended, how much of the

1 grant is remaining, and the purposes for which the grant  
2 has been used. The rules may also require the Cook  
3 County Treasurer to certify on a periodic basis that  
4 expenditures of the funds have been made for expenses  
5 that are reasonable, necessary, and appropriate for  
6 payment from the Trust Fund.

7 (3) The State Treasurer shall make the grants to  
8 the Cook County Treasurer as soon as possible after the  
9 beginning of the State fiscal year.

10 (4) The State's Attorney or Public Defender may  
11 apply for supplemental grants during the fiscal year.

12 (5) Grant moneys shall be paid to the Cook County  
13 Treasurer in block grants and held in separate accounts  
14 for the State's Attorney, the Public Defender, and court  
15 appointed defense counsel other than the Cook County  
16 Public Defender, respectively, for the designated fiscal  
17 year, and are not subject to county appropriation.

18 (6) Expenditure of grant moneys under this  
19 subsection (g) is subject to audit by the Auditor  
20 General.

21 (7) The Cook County Treasurer shall immediately  
22 make payment from the appropriate separate account in the  
23 county treasury for capital litigation expenses to the  
24 State's Attorney, Public Defender, or court appointed  
25 defense counsel other than the Public Defender, as the  
26 case may be, upon order of the State's Attorney, Public  
27 Defender or the court, respectively.

28 (h) If a defendant in a capital case in Cook County is  
29 represented by court appointed counsel other than the Cook  
30 County Public Defender, the appointed counsel shall petition  
31 the court for an order directing the Cook County Treasurer to  
32 pay the court appointed counsel's reasonable and necessary  
33 compensation and capital litigation expenses from grant  
34 moneys provided from the Trust Fund. These petitions shall be

1 considered in camera. Orders denying petitions for  
2 compensation or expenses are final. Counsel may not petition  
3 for expenses that may have been provided or compensated by  
4 the State Appellate Defender under item (c)(5) of Section 10  
5 of the State Appellate Defender Act.

6 (i) In counties other than Cook County, and excluding  
7 capital litigation expenses or services that may have been  
8 provided by the State Appellate Defender under item (c)(5) of  
9 Section 10 of the State Appellate Defender Act:

10 (1) Upon certification by the circuit court, on a  
11 form created by the State Treasurer, that all or a  
12 portion of the expenses are reasonable, necessary, and  
13 appropriate for payment from the Trust Fund and the  
14 court's delivery of the certification to the Treasurer,  
15 the Treasurer shall pay the certified expenses of Public  
16 Defenders from the money appropriated to the Treasurer  
17 for capital litigation expenses of Public Defenders in  
18 any county other than Cook County, if there are  
19 sufficient moneys in the Trust Fund to pay the expenses.

20 (2) If a defendant in a capital case is represented  
21 by court appointed counsel other than the Public  
22 Defender, the appointed counsel shall petition the court  
23 to certify compensation and capital litigation expenses  
24 including, but not limited to, investigatory and other  
25 assistance, expert, forensic, and other witnesses, and  
26 mitigation specialists as reasonable, necessary, and  
27 appropriate for payment from the Trust Fund. Upon  
28 certification on a form created by the State Treasurer of  
29 all or a portion of the compensation and expenses  
30 certified as reasonable, necessary, and appropriate for  
31 payment from the Trust Fund and the court's delivery of  
32 the certification to the Treasurer, the State Treasurer  
33 shall pay the certified compensation and expenses from  
34 the money appropriated to the Treasurer for that purpose,

1 if there are sufficient moneys in the Trust Fund to make  
2 those payments.

3 (3) A petition for capital litigation expenses  
4 under this subsection shall be considered in camera.  
5 Orders denying petitions for compensation or expenses are  
6 final.

7 (j) If the Trust Fund is discontinued or dissolved by an  
8 Act of the General Assembly or by operation of law, any  
9 balance remaining in the Trust Fund shall be returned to the  
10 General Revenue Fund after deduction of administrative costs,  
11 any other provision of this Act to the contrary  
12 notwithstanding.

13 (Source: P.A. 91-589, eff. 1-1-00.)

14 (725 ILCS 124/19)

15 (Section scheduled to be repealed on July 1, 2004)

16 Sec. 19. Report; repeal.

17 (a) The Cook County Public Defender, the Cook County  
18 State's Attorney, the State Appellate Defender, the State's  
19 Attorneys Appellate Prosecutor, and the Attorney General  
20 shall each report separately to the General Assembly by  
21 January 1, 2004 detailing the amounts of money received by  
22 them through this Act, the uses for which those funds were  
23 expended, the balances then in the Capital Litigation Trust  
24 Fund or county accounts, as the case may be, dedicated to  
25 them for the use and support of Public Defenders, appointed  
26 trial defense counsel, and State's Attorneys, as the case may  
27 be. The report shall describe and discuss the need for  
28 continued funding through the Fund and contain any  
29 suggestions for changes to this Act.

30 (b) (Blank) ~~Unless--the---General---Assembly---provides~~  
31 ~~otherwise, this Act is repealed on July 1, 2004.~~

32 (Source: P.A. 91-589, eff. 1-1-00.)

1 Section 50. The Unified Code of Corrections is amended  
2 by adding Section 5-2-7 and changing Sections 3-2-7, 3-3-13  
3 and 5-4-3 as follows:

4 (730 ILCS 5/3-2-7) (from Ch. 38, par. 1003-2-7)

5 Sec. 3-2-7. Staff Training and Development.

6 (a) The Department shall train its own personnel and any  
7 personnel from local agencies by agreements under Section  
8 3-15-2.

9 (b) To develop and train its personnel, the Department  
10 may make grants in aid for academic study and training in  
11 fields related to corrections. The Department shall establish  
12 rules for the conditions and amounts of such grants. The  
13 Department may employ any person during his program of  
14 studies and may require the person to work for it on  
15 completion of his program according to the agreement entered  
16 into between the person receiving the grant and the  
17 Department.

18 (c) The training of personal of the Department shall  
19 include instruction on consular rights and the notification  
20 obligations to be followed during the arrest and detention of  
21 foreign nationals under the protocols of the Vienna  
22 Convention on Consular Relations.

23 (Source: P.A. 77-2097.)

24 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

25 Sec. 3-3-13. Procedure for Executive Clemency.

26 (a) Petitions seeking pardon, commutation, or reprieve  
27 shall be addressed to the Governor and filed with the  
28 Prisoner Review Board. The petition shall be in writing and  
29 signed by the person under conviction or by a person on his  
30 behalf. It shall contain a brief history of the case, the  
31 reasons for seeking executive clemency, and other relevant  
32 information the Board may require.

1 (a-5) After a petition has been denied by the Governor,  
2 the Board may not accept a repeat petition for executive  
3 clemency for the same person until one full year has elapsed  
4 from the date of the denial. The Chairman of the Board may  
5 waive the one-year requirement if the petitioner offers in  
6 writing new information that was unavailable to the  
7 petitioner at the time of the filing of the prior petition  
8 and which the Chairman determines to be significant. The  
9 Chairman also may waive the one-year waiting period if the  
10 petitioner can show that a change in circumstances of a  
11 compelling humanitarian nature has arisen since the denial of  
12 the prior petition.

13 (b) Notice of the proposed application shall be given by  
14 the Board to the committing court and the state's attorney of  
15 the county where the conviction was had.

16 (c) The Board shall, if requested and upon due notice,  
17 give a hearing to each application, allowing representation  
18 by counsel, if desired, after which it shall confidentially  
19 advise the Governor by a written report of its  
20 recommendations which shall be determined by majority vote.  
21 The Board shall meet to consider such petitions no less than  
22 4 times each year.

23 Application for executive clemency under this Section may  
24 not be commenced on behalf of a person who has been sentenced  
25 to death without the written consent of the defendant, unless  
26 the defendant, because of a mental or physical condition, is  
27 incapable of asserting his or her own claim.

28 All petitions for executive clemency on behalf of a  
29 person who is sentenced to death must be filed with the  
30 Prisoner Review Board within 30 days from the date that the  
31 Supreme Court has issued a final order setting the execution  
32 date. The Governor or the Chairman of the Prisoner Review  
33 Board may waive the 30-day requirement if the petitioner has  
34 just cause for not filing the petition within the appropriate

1 time limitations.

2 (d) The Governor shall decide each application and  
3 communicate his decision to the Board which shall notify the  
4 petitioner.

5 In the event a petitioner who has been convicted of a  
6 Class X felony is granted a release, after the Governor has  
7 communicated such decision to the Board, the Board shall give  
8 written notice to the Sheriff of the county from which the  
9 offender was sentenced if such sheriff has requested that  
10 such notice be given on a continuing basis. In cases where  
11 arrest of the offender or the commission of the offense took  
12 place in any municipality with a population of more than  
13 10,000 persons, the Board shall also give written notice to  
14 the proper law enforcement agency for said municipality which  
15 has requested notice on a continuing basis.

16 (e) Nothing in this Section shall be construed to limit  
17 the power of the Governor under the constitution to grant a  
18 reprieve, commutation of sentence, or pardon.

19 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

20 (730 ILCS 5/5-2-7 new)

21 Sec. 5-2-7. Fitness to be executed.

22 (a) A person is unfit to be executed if the person is  
23 mentally retarded. For the purposes of this Section,  
24 "mentally retarded" means:

25 (1) having significantly sub-average general  
26 intellectual functioning as evidenced by a functional  
27 intelligence quotient (I.Q.) of 70 or below; and

28 (2) having deficits in adaptive behavior.

29 The mental retardation must have been manifested during  
30 the developmental period, or by 18 years of age.

31 (b) The question of fitness to be executed may be raised  
32 after pronouncement of the death sentence. The procedure for  
33 raising and deciding the question shall be the same as that

1 provided for raising and deciding the question of fitness to  
2 stand trial subject to the following specific provisions:

3 (1) the question shall be raised by motion filed in  
4 the sentencing court;

5 (2) the question shall be decided by the court;

6 (3) the burden of proving that the offender is  
7 unfit to be executed is on the offender;

8 (4) if the offender is found to be mentally  
9 retarded, the court must resentence the offender to  
10 natural life imprisonment under Chapter V of the Unified  
11 Code of Corrections.

12 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

13 Sec. 5-4-3. Persons convicted of, or found delinquent  
14 for, certain offenses or institutionalized as sexually  
15 dangerous; specimens; genetic marker groups.

16 (a) Any person convicted of, found guilty under the  
17 Juvenile Court Act of 1987 for, or who received a disposition  
18 of court supervision for, a qualifying offense or attempt of  
19 a qualifying offense, convicted or found guilty of any  
20 offense classified as a felony under Illinois law, found  
21 guilty or given supervision for any offense classified as a  
22 felony under the Juvenile Court Act of 1987, or  
23 institutionalized as a sexually dangerous person under the  
24 Sexually Dangerous Persons Act, or committed as a sexually  
25 violent person under the Sexually Violent Persons Commitment  
26 Act shall, regardless of the sentence or disposition imposed,  
27 be required to submit specimens of blood, saliva, or tissue  
28 to the Illinois Department of State Police in accordance with  
29 the provisions of this Section, provided such person is:

30 (1) convicted of a qualifying offense or attempt of  
31 a qualifying offense on or after July 1, 1990 the  
32 ~~effective--date--of--this--amendatory--Act--of--1989,~~ and  
33 sentenced to a term of imprisonment, periodic

1 imprisonment, fine, probation, conditional discharge or  
2 any other form of sentence, or given a disposition of  
3 court supervision for the offense; ~~or~~

4 (1.5) found guilty or given supervision under the  
5 Juvenile Court Act of 1987 for a qualifying offense or  
6 attempt of a qualifying offense on or after January 1,  
7 1997; ~~the effective date of this amendatory Act of 1996,~~  
8 ~~or~~

9 (2) ordered institutionalized as a sexually  
10 dangerous person on or after July 1, 1990; ~~the effective~~  
11 ~~date of this amendatory Act of 1989,~~ ~~or~~

12 (3) convicted of a qualifying offense or attempt of  
13 a qualifying offense before July 1, 1990 ~~the effective~~  
14 ~~date of this amendatory Act of 1989~~ and is presently  
15 confined as a result of such conviction in any State  
16 correctional facility or county jail or is presently  
17 serving a sentence of probation, conditional discharge or  
18 periodic imprisonment as a result of such conviction; ~~or~~

19 (3.5) convicted or found guilty of any offense  
20 classified as a felony under Illinois law or found guilty  
21 or given supervision for such an offense under the  
22 Juvenile Court Act of 1987 on or after August 22, 2002;  
23 ~~the effective date of this amendatory Act of the 92nd~~  
24 ~~General Assembly,~~ ~~or~~

25 (4) presently institutionalized as a sexually  
26 dangerous person or presently institutionalized as a  
27 person found guilty but mentally ill of a sexual offense  
28 or attempt to commit a sexual offense; ~~or~~

29 (4.5) ordered committed as a sexually violent  
30 person on or after the effective date of the Sexually  
31 Violent Persons Commitment Act; or

32 (5) seeking transfer to or residency in Illinois  
33 under Sections 3-3-11.05 through 3-3-11.5 of the Unified  
34 Code of Corrections and the Interstate Compact for Adult

1 Offender Supervision or the Interstate Agreements on  
2 Sexually Dangerous Persons Act.

3 Notwithstanding other provisions of this Section, any  
4 person incarcerated in a facility of the Illinois Department  
5 of Corrections on or after August 22, 2002 ~~the-effective-date~~  
6 ~~of-this-amendatory-Act-of-the-92nd-General-Assembly~~ shall be  
7 required to submit a specimen of blood, saliva, or tissue  
8 prior to his or her release on parole or mandatory supervised  
9 release, as a condition of his or her parole or mandatory  
10 supervised release.

11 (a-5) Any person who was otherwise convicted of or  
12 received a disposition of court supervision for any other  
13 offense under the Criminal Code of 1961 or who was found  
14 guilty or given supervision for such a violation under the  
15 Juvenile Court Act of 1987, may, regardless of the sentence  
16 imposed, be required by an order of the court to submit  
17 specimens of blood, saliva, or tissue to the Illinois  
18 Department of State Police in accordance with the provisions  
19 of this Section.

20 (b) Any person required by paragraphs (a)(1), (a)(1.5),  
21 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,  
22 saliva, or tissue shall provide specimens of blood, saliva,  
23 or tissue within 45 days after sentencing or disposition at a  
24 collection site designated by the Illinois Department of  
25 State Police.

26 (c) Any person required by paragraphs (a)(3), (a)(4),  
27 and (a)(4.5) to provide specimens of blood, saliva, or tissue  
28 shall be required to provide such samples prior to final  
29 discharge, parole, or release at a collection site designated  
30 by the Illinois Department of State Police.

31 (c-5) Any person required by paragraph (a)(5) to provide  
32 specimens of blood, saliva, or tissue shall, where feasible,  
33 be required to provide the specimens before being accepted  
34 for conditioned residency in Illinois under the interstate

1 compact or agreement, but no later than 45 days after arrival  
2 in this State.

3 (c-6) The Illinois Department of State Police may  
4 determine which type of specimen or specimens, blood, saliva,  
5 or tissue, is acceptable for submission to the Division of  
6 Forensic Services for analysis.

7 (d) The Illinois Department of State Police shall  
8 provide all equipment and instructions necessary for the  
9 collection of blood samples. The collection of samples shall  
10 be performed in a medically approved manner. Only a  
11 physician authorized to practice medicine, a registered nurse  
12 or other qualified person trained in venipuncture may  
13 withdraw blood for the purposes of this Act. The samples  
14 shall thereafter be forwarded to the Illinois Department of  
15 State Police, Division of Forensic Services, for analysis and  
16 categorizing into genetic marker groupings.

17 (d-1) The Illinois Department of State Police shall  
18 provide all equipment and instructions necessary for the  
19 collection of saliva samples. The collection of saliva  
20 samples shall be performed in a medically approved manner.  
21 Only a person trained in the instructions promulgated by the  
22 Illinois State Police on collecting saliva may collect saliva  
23 for the purposes of this Section. The samples shall  
24 thereafter be forwarded to the Illinois Department of State  
25 Police, Division of Forensic Services, for analysis and  
26 categorizing into genetic marker groupings.

27 (d-2) The Illinois Department of State Police shall  
28 provide all equipment and instructions necessary for the  
29 collection of tissue samples. The collection of tissue  
30 samples shall be performed in a medically approved manner.  
31 Only a person trained in the instructions promulgated by the  
32 Illinois State Police on collecting tissue may collect tissue  
33 for the purposes of this Section. The samples shall  
34 thereafter be forwarded to the Illinois Department of State

1 Police, Division of Forensic Services, for analysis and  
2 categorizing into genetic marker groupings.

3 (d-5) To the extent that funds are available, the  
4 Illinois Department of State Police shall contract with  
5 qualified personnel and certified laboratories for the  
6 collection, analysis, and categorization of known samples.

7 (e) The genetic marker groupings shall be maintained by  
8 the Illinois Department of State Police, Division of Forensic  
9 Services.

10 (f) The genetic marker grouping analysis information  
11 obtained pursuant to this Act shall be confidential and shall  
12 be released only to peace officers of the United States, of  
13 other states or territories, of the insular possessions of  
14 the United States, of foreign countries duly authorized to  
15 receive the same, to all peace officers of the State of  
16 Illinois and to all prosecutorial agencies. Notwithstanding  
17 the limits on disclosure stated by this subsection (f), the  
18 genetic marker grouping analysis information obtained under  
19 this Act also may be released by court order pursuant to a  
20 motion under Section 114-15 of the Code of Criminal Procedure  
21 of 1963 to a defendant who meets all of the requirements  
22 under that Section. The genetic marker grouping analysis  
23 information obtained pursuant to this Act shall be used only  
24 for (i) valid law enforcement identification purposes and as  
25 required by the Federal Bureau of Investigation for  
26 participation in the National DNA database or (ii) technology  
27 validation purposes. Notwithstanding any other statutory  
28 provision to the contrary, all information obtained under  
29 this Section shall be maintained in a single State data base,  
30 which may be uploaded into a national database, and which  
31 information may be subject to expungement only as set forth  
32 in subsection (f-1).

33 (f-1) Upon receipt of notification of a reversal of a  
34 conviction based on actual innocence, or of the granting of a

1 pardon pursuant to Section 12 of Article V of the Illinois  
 2 Constitution, if that pardon document specifically states  
 3 that the reason for the pardon is the actual innocence of an  
 4 individual whose DNA record has been stored in the State or  
 5 national DNA identification index in accordance with this  
 6 Section by the Illinois Department of State Police, the DNA  
 7 record shall be expunged from the DNA identification index,  
 8 and the Department shall by rule prescribe procedures to  
 9 ensure that the record and any samples, analyses, or other  
 10 documents relating to such record, whether in the possession  
 11 of the Department or any law enforcement or police agency, or  
 12 any forensic DNA laboratory, including any duplicates or  
 13 copies thereof, are destroyed and a letter is sent to the  
 14 court verifying the expungement is completed.

15 (f-5) Any person who intentionally uses genetic marker  
 16 grouping analysis information, or any other information  
 17 derived from a DNA sample, beyond the authorized uses as  
 18 provided under this Section, or any other Illinois law, is  
 19 guilty of a Class 4 felony, and shall be subject to a fine of  
 20 not less than \$5,000.

21 (g) For the purposes of this Section, "qualifying  
 22 offense" means any of the following:

23 (1) any violation or inchoate violation of Section  
 24 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the  
 25 Criminal Code of 1961~~;~~

26 (1.1) any violation or inchoate violation of  
 27 Section 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2,  
 28 18-3, 18-4, 19-1, or 19-2 of the Criminal Code of 1961  
 29 for which persons are convicted on or after July 1,  
 30 2001~~;~~

31 (2) any former statute of this State which defined  
 32 a felony sexual offense~~;~~

33 (3) (blank)~~;~~

34 (4) any inchoate violation of Section 9-3.1,

1 11-9.3, 12-7.3, or 12-7.4 of the Criminal Code of 1961;  
2 or

3 (5) any violation or inchoate violation of Article  
4 29D of the Criminal Code of 1961.

5 (g-5) (Blank).

6 (h) The Illinois Department of State Police shall be the  
7 State central repository for all genetic marker grouping  
8 analysis information obtained pursuant to this Act. The  
9 Illinois Department of State Police may promulgate rules for  
10 the form and manner of the collection of blood, saliva, or  
11 tissue samples and other procedures for the operation of this  
12 Act. The provisions of the Administrative Review Law shall  
13 apply to all actions taken under the rules so promulgated.

14 (i) A person required to provide a blood, saliva, or  
15 tissue specimen shall cooperate with the collection of the  
16 specimen and any deliberate act by that person intended to  
17 impede, delay or stop the collection of the blood, saliva, or  
18 tissue specimen is a Class A misdemeanor.

19 (j) Any person required by subsection (a) to submit  
20 specimens of blood, saliva, or tissue to the Illinois  
21 Department of State Police for analysis and categorization  
22 into genetic marker grouping, in addition to any other  
23 disposition, penalty, or fine imposed, shall pay an analysis  
24 fee of \$200. If the analysis fee is not paid at the time of  
25 sentencing, the court shall establish a fee schedule by which  
26 the entire amount of the analysis fee shall be paid in full,  
27 such schedule not to exceed 24 months from the time of  
28 conviction. The inability to pay this analysis fee shall not  
29 be the sole ground to incarcerate the person.

30 (k) All analysis and categorization fees provided for by  
31 subsection (j) shall be regulated as follows:

32 (1) The State Offender DNA Identification System  
33 Fund is hereby created as a special fund in the State  
34 Treasury.

1           (2) All fees shall be collected by the clerk of the  
2 court and forwarded to the State Offender DNA  
3 Identification System Fund for deposit. The clerk of the  
4 circuit court may retain the amount of \$10 from each  
5 collected analysis fee to offset administrative costs  
6 incurred in carrying out the clerk's responsibilities  
7 under this Section.

8           (3) Fees deposited into the State Offender DNA  
9 Identification System Fund shall be used by Illinois  
10 State Police crime laboratories as designated by the  
11 Director of State Police. These funds shall be in  
12 addition to any allocations made pursuant to existing  
13 laws and shall be designated for the exclusive use of  
14 State crime laboratories. These uses may include, but  
15 are not limited to, the following:

16                   (A) Costs incurred in providing analysis and  
17 genetic marker categorization as required by  
18 subsection (d).

19                   (B) Costs incurred in maintaining genetic  
20 marker groupings as required by subsection (e).

21                   (C) Costs incurred in the purchase and  
22 maintenance of equipment for use in performing  
23 analyses.

24                   (D) Costs incurred in continuing research and  
25 development of new techniques for analysis and  
26 genetic marker categorization.

27                   (E) Costs incurred in continuing education,  
28 training, and professional development of forensic  
29 scientists regularly employed by these laboratories.

30           (1) The failure of a person to provide a specimen, or of  
31 any person or agency to collect a specimen, within the 45 day  
32 period shall in no way alter the obligation of the person to  
33 submit such specimen, or the authority of the Illinois  
34 Department of State Police or persons designated by the

1 Department to collect the specimen, or the authority of the  
2 Illinois Department of State Police to accept, analyze and  
3 maintain the specimen or to maintain or upload results of  
4 genetic marker grouping analysis information into a State or  
5 national database.

6 (Source: P.A. 91-528, eff. 1-1-00; 92-16, eff. 6-28-01;  
7 92-40, eff. 6-29-01; 92-571, eff. 6-26-02; 92-600, eff.  
8 6-28-02; 92-829, eff. 8-22-02; 92-854, eff. 12-5-02; revised  
9 1-20-03.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.

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- 20 ILCS 2610/9.5 new
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- 50 ILCS 705/6.1
- 50 ILCS 705/7 from Ch. 85, par. 507
- 55 ILCS 5/3-4006 from Ch. 34, par. 3-4006
- 720 ILCS 5/8-4 from Ch. 38, par. 8-4
- 720 ILCS 5/9-1 from Ch. 38, par. 9-1
- 720 ILCS 5/14-3 from Ch. 38, par. 14-3
- 725 ILCS 5/103-10 new
- 725 ILCS 5/103-11 new
- 725 ILCS 5/ Art. 106F heading new
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- 725 ILCS 5/106G Art. 106G heading new
- 725 ILCS 5/106G-5 new
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- 1 725 ILCS 124/19
- 2 730 ILCS 5/3-2-7 from Ch. 38, par. 1003-2-7
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